Supreme Court, U.S.
FILED

No. 091542 APR 30 2010

OFFICE OF THE CLERK

In The Supreme Court of The United States

ZINNIA I. CHEN, CHARLIE H. DAVIS,
LEYDA E. CHEW, MICHAEL TAYLOR,
AND MARY C. FOX,
Petitioners,

v.

HON. KENNETH R. LESTER, JR., *ET AL.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED
(Rule 14.1(a))

While pro'se petitioners do not lose a constitutional First Amendment right merely because of a purported failure to allege that the respondents named herein are state actors for the purpose of § 1983, equally purported judicial immunity, qualified immunity, the purported failure to allege facts indicating that said respondents deprived petitioners of a constitutional right nor the raised assertions that the statues relied on by respondents did not create a private cause of action qualify pro'se petitioners to be deprived of a Fifth Amendment constitutional right. These constitutional right expectations held by pro'se petitioners are not at all unreasonable due to *Cross v. Georgia*, 581 F2d 102, 104 (5th Cir. 1978). The questions presented below are:

1. Whether motions, pleadings, correspondences and other papers timely filed by pro'se petitioners in the lower state, district, and court of appeals below are routinely unjustly denied or receive no ruling at all by said courts in light of respondents of the state of Florida.

2. Whether the guaranteed constitutional First Amendment right which strictly prohibit laws prohibiting the petitioning for governmental redress of grievances were dishonored below in the no less than 3 interposed state court cases incorporating the pro'se petitioners name herein.

3. Whether the forgoing interposed separate lower state court cases incorporating the five pro'se petitioners named herein received at least one ruling on a underlying motion, pleading, correspondences or other papers timely filed by petitioners in the separate lower state court cases below prior to petitioners being repeatedly garnished, falsely arrested, imprisoned, assaulted, and even deprived of family rights in circumvention of existing court orders which strictly prohibited such actions and furthermore where no crime was committed at all.

PARTIES TO THE PROCEEDINGS
(Rule 14.1(b))

Petitioners Zinnia I. Chen, Charlie H. Davis, Leyda E. Chew, Michael Taylor and Mary C. Fox have no parent corporation and no publicly held company that owns 10% or more of its stock Rule 29.6. Accordingly, the parties to the proceedings are:

Lower State Court Magistrate Judges/Respondents

Hon. Galluzzo D. John

Hon. Lester Jr. Kenneth R.

Hon. Sprinkle IV, George A.

Lower District Court Trial Judges

Hon. Baker David A.

Hon. Kelly Gregory J.

Hon. Spaulding Karla R.

Lower District Court Chief Judge

Hon. Conway Anne C. / Complained Of Judge

Attorneys

Grant Jeffrey K.

Gorenflo Clifton H. / Respondent

Gorenflo Rachel A. / Respondent

Harrop L. Ronald

Lerner Robert N. / Respondent

Lugo Michael D'

McMahon James Scott

Sewell E. Susan

Siebens Gerald D.

Parties And Affiliates

Amin Mrinalini / Respondent

Bolar Elaina / Respondent

Chen Zinnia I./Petitioner / InsideOut Charitable's Inc.

Chew Leyda E. / Petitioner

Clem Thomas / Respondent

Davis Charlie H. / Petitioner

Deleon Victor Gregory / Respondent

Dew Claire Oscar F. / Respondent

Eslinger Donald F. / Respondent

Fox Mary C. / Petitioner

Gardner Lydia / Respondent

Gosh Bill / Respondent

Hess Barbara / Respondent

Morse Maryanne / Respondent

Nelson Mike / Respondent

Ochs Holly / Respondent

Phipps Laura / Respondent

Spaziano Lee M. / Respondent

Smith Chuck / Respondent

Taylor Michael / Respondent

Tricomi Katie / Respondent

The U.S. Department Of Justice / Civil Division

Holder Eric H. Jr.

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PETITION FOR WRIT OF CERTIORARI
(Rule 33.1)

ZINNIA I. CHEN, CHARLIE H. DAVIS, LEYDA E. CHEW, MICHAEL TAYLOR and MARY C. FOX, are pro'se petitioners under duress and the mandated rules of this Court and respectfully pray that a writ of certiorari be issued to review the judgment of the lower United States Court of Appeals for the Eleventh Circuit in the above-entitled proceeding.

OPINIONS BELOW
(Rule 14.1(d))

Pursuant to Supreme Court Rule 14.1(d), petitioners seek review of an unpublished opinion (App. 1-19) filed February 1, 2010 in the lower U.S. Court of Appeals for the Eleventh Circuit (USCA No. 09-11487) affirming the lower district court's earlier order[s] (App. 22-65) rendered prior to and on the date of March 19, 2009 after the pro'se petitioners named herein were not only repeatedly denied a fair hearing they also suffered wage garnishments, false arrest, false imprisonment, the repeated deprivation of their due process and constitutional rights, subsequent to the removal of minor children from their custody premised upon a manufactured false report of child abuse concocted by a former husband and local law enforcement officials of the justice department of Seminole County in the state of Florida.

JURISDICTION
(Rule 14.1(e)(iv))

The U.S. Court of Appeals for the Eleventh Circuit below issued its forgoing decision on February 1, 2010 (App. 1-19). Moreover, on February 19, 2010 the pro'se petitioners herein timely filed a petition for rehearing as well as their amended petition for rehearing on February 22, 2010. However, here recently on the date of May 25, 2010 the amended petition for rehearing timely filed by petitioners was denied (App 66-67) . As it appears, 11th Cir. R. 35-3 disclose that it is not necessary to file a petition for rehearing or a petition for rehearing en banc in the Eleventh Circuit U.S. Court of Appeals below as a prerequisite to the filing of a petition for writ of certiorari in the Supreme Court of the United States. To that end, petitioner's amended petition for rehearing timely filed February 22, 2010 was denied by the Eleventh Circuit U.S. Court of Appeals below on May 25, 2010 (App. 66-67). Accordingly, pursuant to Supreme Court Rule 13(1)(2) & (3), petitioners respectfully re-file this petition for writ of certiorari incorporating the order dated February 1, 2010 initially received from the Eleventh Circuit U.S. Court of Appeals below as well as it's judgment dated June 2, 2010 which furthermore was recently issued as the mandate of judgment for said order of the court dated February 1, 2010 (App. 20-21).

Wherefore, pursuant to Supreme Court Rule 14(1)(e)(iv), the statutory provision believed to confer on this Court jurisdiction to review on a writ of

certiorari the judgment or order in question are 28 U.S.C. § 1254(1).

The United States Court of Appeals for the Eleventh Circuit had jurisdiction based on 28 U.S.C. § 1291.

THE CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are the First, Fourth, Fifth, and Fourteenth Amendment to the United States Constitution. In short order, the right to petition in the United States are understandably guaranteed by the First Amendment to the United States Constitution which strictly prohibit Courts from abridging "the right of a pro'se petitioner to petition the Government for redress of grievances". In the alternative, the Fourth Amendment indisputably provides a pro'se petitioner the right to be secure against unreasonable searches and seizures and at best not to be violated. What's more, it is expressly stated in this subject provision that no warrants shall be issued except upon probable cause supported by oath or affirmation which particularly describe the place to be searched as well as the person or thing to be seized. In the instant case, a warrant was not issued and property was illegally searched and even minor children were removed from the custody of pro'se petitioners on the spot contrary to an existing order of the court which strictly prohibited such actions by state actors of the state of Florida and the justice department of Seminole County, Florida.

Of major importance, equally involved are the Fifth Amendment provision to the United States Constitution which protects pro'se petitioners against the abuse of government authority in a legal procedure.... as well as the Fourteenth Amendment incorporating the due process clause disclosing the principle that the government must respect all of the legal rights that are owed to a person according to the law. More specifically, the due process which holds the government subservient to the law of the land, and protects an individual persons from the state ....And finally, section 1983 of Title 42 of the United States Code which provides that:

> Every person who, under color of any statue ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any act of congress applicable exclusively to the District of Columbia shall be considered

to be a statute of the District of Columbia. 42 U.S.C. § 1983.

STATEMENT OF THE CASE

Subsequent to pro'se petitioners individual appearances in separate state court proceedings held below said proceedings routinely culminated into the repeated due process and constitutional violations suffered by the pro'se petitioners named herein. In what is grossly conspiracies which notably started well over six years ago, it is undisputed that in no less than five of the underlying separate state court cases incorporating the pro'se petitioner's named herein and docketed in the lower courts situated in the state of Florida that erroneous judgments manufactured were rendered in favor of said respondents of the state of Florida. In tantamount said *ex parte* judgments constituted bogus garnishments, manufactured delinquency notices, false arrest, false imprisonment, and even minor children removed from their home and the custody of pro'se petitioners impromptu as a result of a false report of child abuse in circumvention of the forgoing court orders received earlier. Amazingly, in each separate case not a single ruling was had on a motion, pleading, correspondence, or other papers timely filed by pro'se petitioners in their defense in the total of more than five underlying separate ongoing state court cases as well as the cases manufactured by said respondents of the state of Florida named herein.

In the district court below, an even worse deprivation of pro'se petitioners constitutional rights

was repeatedly committed by said magistrates subsequent to their receipt of pro'se petitioners supplemental complaint for damages and injunctive relief filed December 8, 2010 (Doc.4) in grievance and attempt to redress the matter which amounted to the repeated due process and constitutional violations routinely committed during the proceedings held in the state courts below. More specifically, on the forgoing date of November 18, 2008 (Doc. 1) pro'se petitioners Chen, Davis, Chew, Taylor and Fox collectively filed their interposed complaint for damages and injunctive relief in the lower U.S. District Court, Middle District of Florida, Orlando division pursuant to Title 28, U.S.C. § 1964 which in fact authorized the lower district court original jurisdiction of any civil action by law to be commenced by any person as well as subject-matter jurisdiction under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(a)(1)(2)(3) and 1331 provision which gives the district court the right to hear the subject case for the first time.

At the time of filing the subject complaint in the lower district court, concurrently ongoing below was the separate complained of companion real-estate fraud case as well as the separate manufactured dependency companion state court case proceedings incorporating pro'se petitioners and said respondents of the state of Florida named herein. Upon pro'se petitioner's filing of the lower district court case number 6:08-CV-1954-22-GJK it was repeatedly delayed by "complained of Judge" Anne C. Conway as lower state court magistrates / respondents of the state of Florida escalated their filings of false

judgments in the manufactured real-estate and dependency case proceedings held in the state court below relative to the pro'se petitioners named herein. Much less, while under the jurisdiction of the district court below, pro'se petitioners named herein were compelled to appear in the ongoing lower state court proceedings anyway. In stark contrast, contrary to the lower district court Local Rule 1.04(d) requirement incorporating the related case order, the interested persons order, and track to notice which mandated the filing of motions, memorandums, responses, and other papers, respondents of the state of Florida at best were permitted to file unruly papers contrary to the rules of the lower district court anyway (*see also*, Doc. 3, the related case order).

Reminiscent of that of a "kangaroo court", contrary to the lower district court Local Rule 2.03, unlawful impromptu appearances were even permitted by attorneys purportedly appearing on behalf of said respondents of the state of Florida. In the alternative, this occurred simultaneously as respondents of the state of Florida continued their effect of false judgments during the fraudulent the real estate proceedings and manufactured dependency case proceedings held in the state courts below. In total reckless disregard for the law and the pro'se petitioner's named herein, said attorneys purportedly on behalf of respondents of the state of Florida were permitted to file untimely motions contrary to the notice of appearance requirement mandated by the local rules of the lower district court anyway. Significantly, at the time the subject interposed complaint for damages and injunctive

relief (Doc. 4) was filed by pro'se petitioners, petitioners furthermore requested a "summons in a civil action" and thereafter incorporated each respondent named herein as required by Rule 4, Federal Rule of Civil Procedure incorporating service of summons, issuance, and by whom.

Significantly, said summons and payment in full was expressly delivered to the local Seminole and Orange County Sheriff's office Civil Division for processing. However, upon petitioners non-receipt of proof of "service of summons" after a lapse of weeks had passed and the summons still had not been served on a number of respondents of the state of Florida located within the same building as the office of the "Judicial Processing" divisions of the Orange and Seminole County Sheriff's department (*see* also, Doc. 35 & 36, the notice of filing incorporating plaintiffs correspondence). On December 23, 2009 pro'se petitioners pursuant to Title 28 U.S.C. § 1651 filed a "petition for writ of mandamus", and thereafter an amended and supplemental petition for writ of mandamus" (*See* also Doc. 16, 33 & 60) on the matter. Significantly, a ruling was not had and delayed for weeks on the subject mandamus petition filed by pro'se petitioners in grievance of the matter.

Still, service of summons was equally not had on respondent / "Judge Sprinkle" whom subsequent to the filing of pro'se petitioners initial complaint for damages and injunctive relief in the lower district court appeared in proceedings before pro'se petitioners Taylor and Fox prior to rendering a fraudulent ruling which later amounted to

garnishments grossly deducted by said petitioners employer Siemens Energy Incorporated, as well as the contusioned wrist suffered by pro'se petitioner Taylor during a visit to the courtroom of respondent Sprinkle prior to his immediate disappearance into purported retirement thereafter. Yet, in the subsequent district court order recorded at "Doc. 151", "complained of Judge" the Honorable Anne C. Conway would later rule (see, pg.5, ¶2) that "the court is frankly confused as to why plaintiffs Taylor, Fox, Chew and Davis are taking part in the present action" filed by pro'se petitioners incorporating the continued due process and constitutional violations repeatedly committed by said respondents of the state of Florida.

In the alternative, on January 16, 2009 pro'se petitioners / the real crime victims filed a motion and objection (Doc. 89) in opposition to the January 5, 2009 Order (Doc. 38) of the lower district court requiring pro'se petitioners to provide respondents an e-mail address and telephone number within 10 days thereof. In support thereof, pro'se petitioners not limited to Chen proffered to the lower district court the incriminating uncut raw "DVD" video footage which respondents of the state of Florida appeared in and furthermore it was incorporated in the initial evidentiary exhibit list (Doc. 89) received January 16, 2009 by the lower district court. Substantively, the subject living color "DVD" identified as exhibit "1" disclose respondent Amin of the state of Florida via speaker phone dialogue and later in person at the Chen's residence with a host of armed authorities form the Seminole County Sheriff

Department before, during, and after the in person interview with pro'se petitioner Chen and the unwarranted removal of Chen's minor children. Unequivocally, Amin would later wholly alleged the purpose of the her meeting with pro'se petitioner Chen was relative to Chen's minor children when in fact the false recorded statements uttered by respondent Amin manifest to be Amin's fabricated agenda to remove pro'se petitioner Chen's minor children from her custody outside of court premised upon a manufactured false allegation of child abuse manufactured by Chen's former husband / respondent Victor Gregory Deleon earlier.

In truth, as the lower Eleventh Circuit U.S. Court of Appeals and district court are no doubt aware, the chain of events was not actually an action which initially occurred in the judges chambers / respondents Galluzzo and Lester Jr. as wholly manufactured and later alleged by said court of appeals, "complained of Judge Anne C. Conway of the lower district court, as well as the underlying state court incorporating said respondents of the state of Florida named herein whom not only willfully committed the unconstitutional violations said violations were committed in circumvention of an existing Order of the court which strictly prohibited such actions by said respondents of the state of Florida and respondent Victor Gregory Deleon. On February 10 & 12 2009, pro'se petitioners repeatedly motioned the lower district court for the recusal of Chief District Court Judge Ann C. Conway however the motions for recusal repeatedly filed by pro'se petitioners was personally

denied by Judge Ann C. Conway and was to no avail (Doc. 109, 111 & 114).

Conclusively, at the time of March 19, 2009 complained of Judge Anne C. Conway of the lower district court would later move rapidly in an unconscionable decision (App. 22-65, Doc. 151) to direct the clerk of the court not to accept any additional filings and to accept only a notice of appeal after *sau sponte* dismissing pro'se petitioners complaint without ever having a trial on the matter as well as the due process and constitutional violations continuously committed by said respondents of the state of Florida named herein. Abundently clear in the subject thirty-six page order received from the lower district court notably it primarily focused upon petitioner Chen's former husband Victor Gregory DeLæon as well as an elected sequence of events which merely illuminated only the concurrent lower state court dependency proceedings manufactured by said respondents of the state of Florida earlier. Similar to the other cases incorporating said petitioners named herein, not one ruling can be discovered on a single motion, pleading, correspondence, or other paper timely filed by pro'se petitioner Chen in her defense in the manufactured companion state court cases below specifically the lower state court dependency case numbers 02-DR-4662-02DL as well as PO-1077-DP filed by said respondents in the circuit court of the Eighteenth Judicial Circuit in and for Seminole County Florida.

SUMMARY OF THE ARGUMENT

Pro'se petitioners maintain that an even worse deprivation of petitioner's constitutional rights occurred subsequent to the filing of their supplemental complaint (Doc. 4) incorporating the concurrent ongoing unconstitutional actions committed by respondent Sprinkle of the state of Florida. Although case law provides something to read when contemplating the immunity of a state actor, pro'se petitioners maintain it is a trap for those who dig no further into interpretive case law. Willfully, the lower Eleventh Circuit, U.S. Court of Appeals erred in viewing this case as "lacking merit" when in fact pro'se petitioners at all times were prohibited from filing even a bare minimal Fed. R. Civ. P., 15(a)(b) amended complaint in the lower district court.

As it appears, incorporated in the subject complaint for damages and injunctive relief (Doc. 4) filed by pro'se petitioners are the repeated due process and constitutional violations repeatedly suffered in the state courts below. Federal law imposes civil liability on a person who acts under color of state law to deprive another of a federal right. "Every person who, under color of any statue ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any act of congress applicable exclusively to the District of Columbia shall be considered to be a statue of the District of Columbia. 42 U.S.C. § 1983

As it appears, in pro'se petitioners evidentiary exhibit list and the living color DVD *sau sponte* placed under seal and later omitted from the record, in the truth, the Eleventh Circuit U.S. Court of Appeals, and the underlying U.S. District Court, Middle District Of Florida, Orlando division failed to appreciate the most salient facts and merits of this case while summarizing pro'se petitioners purported errors.

ARGUMENT

The First Amendment to the Constitution, strictly prohibit Courts from abridging "the right of a pro'se petitioner to petition the Government for redress of grievances" as literally disclosed in the order received from "complained of Judge" Anne C. Conway of the underlying district court specifically "in light of plaintiffs / petitioners persist history of filing baseless and largely incomprehensible pleadings which have impacted the resources of this Court, as well as of defendants / respondents, the

clerk is directed not to accept for filing any future pleadings submitted by plaintiffs / petitioners in this case, except for appeal" (*see also,* App. 24-71, Doc. 151, ¶ 28). The Fourth Amendment indisputably provides a pro'se petitioner the right to be secure against unreasonable searches and seizures and not to be violated. Among other things, expressly stated in said constitutional provision are that no warrants shall be issued except upon probable cause supported by oath or affirmation which particularly describe the place to be searched as well as the person or thing to be seized.

In the instant case, pro'se petitioners suffered bogus garnishments, false arrest, false imprisonment, and even had their minor children removed from their home and custody as a result of a false report of child abuse in circumvention of court orders. Much less, a ruling was not had a single motion, pleading, correspondence or other paper timely filed by pro'se petitioners in their defense. Of major importance, equally involved are the Fifth Amendment provision to the United States Constitution which protects pro'se petitioners against the abuse of government authority in a legal procedure... See also, *U.S. v. Goodwin*, 102 S Ct. 2485, 457 U.S. 368, 73 L. Ed 2d 74, on remand 687 F.2d 44 (1982).

Nonetheless, a private party acts "under color of state law", if he acts in concert with a state official acting in his official capacity. *Dennis v. Sparks,* 449 U.S. 24, 27-29 (1980). State action denying a pro'se litigant a fair and impartial hearing in civil

litigation constitutes a deprivation of due process under the Fourteenth Amendment, *Cf Cross v. Georgia*, 581 F.2d 102 (5th Cir. 1978).

Although section 1983 implicitly incorporates the common law doctrine of absolute immunity for Judges, that immunity does not protect private parties who conspire with the Judge as is in the instant case. *Dennis v. Sparks,* 449 U.S. 29-32. The Fourteenth Amendment's guarantee of due process and state proceedings is a federal substantive right, the deprivation of which is remedial under section 1983. *See generally, Carey v. Piphus*, 435 U.S. 247 (1978). Finally, the respondents named herein are not immune from liability for money damages. Pro'se petitioners herein agrees that state judges are absolutely immune from liability for damages for their judicial acts taken within their jurisdiction. *Stump v. Sparkman,* 435 U.S. 349(1978). However, such immunity does not extend to non-judicial acts or a private party who conspire with a state judge even though by so conspiring the private party acts under color of state law as the evidence placed under seal did show.

REASON FOR GRANTING THE WRIT

Of major importance, are because the issues raised herein directly impact humanity relative to pro'se petitioner's that are routinely denied due process and their constitutional rights while falsely arrested, imprisoned, and even garnished in circumvention of forgoing court orders as well as the removal of their minor children premised upon a

false report of child abuse which calumniated into the denial of grievances. For these reasons, a "petition for writ of certiorari" should be granted.

CONCLUSION

The Eleventh Circuit Court Of Appeals judgment should be reversed, with the directive to affirm in favor of pro'se petitioners in lieu of the constitutional provisions mandated above.

Respectfully Submitted,

Zinnia I. Chen,
Charlie H. Davis
Leyda E. Chew
Michael Taylor
Mary C. Fox
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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 09-11487
Non-Argument Calendar

D. C. Docket No. 08-01954-CV-ORL-22-GJK

ZINNIA I. CHEN, biological mother of V.D. and D.D.,
CHARLIE H. DAVIS,
LEYDA E. CHEW,
MICHAEL TAYLOR,
MARY C. FOX,

Plaintiffs-Appellants,

versus

HON. KENNETH R. LESTER, JR., of the state of Florida, in his individual capacity,
CLIFTON H. GORENFLO,
attorney, licensed by the state of Florida,
RACHEL A. GORENFLO, attorney, licensed by the state of Florida,
ROBERT N. LERNER, attorney, licensed by the state of Florida,
LEE M. SPAZIANO, realtor, licensed by the state of Florida,
DONALD F. ESLINGER, Sheriff, state of Florida, et. al.,

Defendants-Appellees

Appeal from the United States District Court
for the Middle District of Florida

(Filed February 1, 2010)

Before TJOFLAT, EDMONDSON and ANDERSON, Circuit Judges.

PER CURIAM:

Zinnia I. Chen, Charlie H. Davis, Leyda E. Chew, Michael Taylor, and Mary C. Fox, (collectively, "Plaintiffs" or "Appellants"), proceeding pro se, appeal from the district court's order dismissing their civil rights complaint pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiffs brought claims under 42 U.S.C. § 1983 and other statutes against a variety of state and private actors. The district court based its dismissal as to each defendant on various grounds, including judicial immunity, qualified immunity, and failure to allege that the defendant was a state actor for purposes of § 1983. In addition, the district court also based its dismissal on Plaintiffs' failure to allege facts indicating that any defendant deprived them of a constitutional right and the fact that many of the statutes that Plaintiffs relied on did not create a private cause of action.

On appeal, Appellants raise the following arguments: the district court judge abused her discretion by refusing to recuse herself; the district court erred by denying them leave to amend their complaint; the district court abused its discretion by striking Plaintiffs' exhibit list and sealing certain exhibits; the district court abused its discretion by denying Plaintiffs sufficient time to respond to the

defendants' motions to dismiss; and the district court abused its discretion by denying Plaintiffs' requests to stay state court proceedings. We discuss these arguments in turn below. It is unclear whether Appellants raise the issue of the district courts grant of the defendants' motions to dismiss. Because the nature of Plaintiffs' claims relates closely to the denial of leave to amend the complaint, we will address the issue.

I. Dismissal Under Fed. R. Civ. P. 12(b)(6)

An appellant, even when proceeding pro se, abandons an issue if he fails to raise it in his initial brief. Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008) cert. denied, 129 S. Ct. 74 (2008). We review a district court's decision to dismiss a complaint for failure to state a claim under Fed. R. Civ. P. 12(b)(6) de novo. Hill v. White, 321 F.3d 1334, 1335 (11th Cir. 2003). The complaint is viewed in the light most favorable to the plaintiffs, and all of the plaintiffs' well-pleaded facts are accepted as true. Am. United Life Ins. Co. v. Martinez, 480 F.3d 1043, 1057 (11th Cir. 2007). The district court should consider only the pleadings and the exhibits attached thereto. Grossman v. Nationsbank, N.A., 225 F.3d 1228, 1231 (11th Cir. 2000). Further, "[i]n the case of a pro se action . . . the court should construe the complaint more liberally than it would formal pleadings drafted by lawyers." Powell v. Lennon, 914 F.2d 1459, 1463 (11th Cir. 1990). In addition, we review a district courts decision to abstain under Younger v. Harris, 401 U.S. 37, 91 S. Ct.

746 (1971) for an abuse of discretion. See Wexler v. Lepore, 385 F.3d 1336, 1338 (11th Cir. 2004).

A. Plaintiffs' Claims for Damages Under 42 U.S.C. § 1983

1. Defendants Lester and Galluzzo

"Judges are entitled to absolute judicial immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction." Sibley v. Lando 437 F.3d 1067, 1070 (11th Cir. 2005) (quotation marks omitted). "Whether a judge's actions were made while acting in his judicial capacity depends on whether: (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity." Id.

Plaintiffs' allegations against Judges Lester and Galluzzo are based on orders issued by the defendants, including custody orders and orders expelling Plaintiffs from the courtroom. Plaintiffs allege that these events arose out of cases pending before Judges Lester and Galluzzo. Issuing custody orders and expelling individuals from a courtroom are normal judicial functions. In this case, it is clear that Plaintiffs were dealing with Judges Lester and Galluzzo in their judicial capacity and that the complained of orders were issued in the defendants' judicial capacity.

Because the defendants were acting in their judicial capacity, they are entitled to absolute immunity from Plaintiffs' claims for money damages under 42 U.S.C. § 1983. Accordingly, the district court did not err in dismissing the § 1983 claims against these defendants.

2. Defendants Morse, Dew, Tricomi, Phipps, Eslinger, Amin, Clem, Hess, Ochs, Nelson, and Gosh "Qualified immunity protects government officials performing discretionary functions from suits in their individual capacities unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known." Anduiar v. Rodriguez, 486 F.3d 1199, 1202 (11th Cir. 2007) (quotation marks and internal quotation marks omitted). "An official asserting the affirmative defense of qualified immunity must initially establish that he was acting within his discretionary authority." Skop v. City of Atlanta, Ga., 485 F.3d 1130, 1136 (11th Cir. 2007). "If the official was acting within the scope of his discretionary authority . . . the burden shifts to the plaintiff to show that the official is not entitled to qualified immunity." Id. at 1136-37. "To overcome qualified immunity, the plaintiff . . . must show that: (1) the defendant violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation." Holloman ex rel. Holloman v. Harland, 370 F.3d 1252, 1264 (11th Cir. 2004). When dealing with claims of qualified immunity, plaintiffs are required to allege facts that would defeat the claim of qualified immunity with some specificity." GJR Invs. Inc. v. County of Escambia, Fa., 132 F.3d 1359, 1367 (11th Cir. 1998).

Plaintiffs allege that these defendant were employed by the state. Moreover, the specific allegations against these defendants all concern actions they took within their discretion as state employees. Therefore, Plaintiffs are required to show that these defendants violated a clearly established constitutional right in order to defeat the defendants' claims of qualified immunity. Plaintiffs have not met this burden. While Plaintiffs generally assert that these defendants' actions violated equal protection and due process, they fail to articulate what specific rights these defendants violated or to explain how these defendants violated those rights. In this case, Plaintiffs fail to allege with any specificity facts indicating that these defendants violated a constitutional right, let alone a clearly established constitutional right. Accordingly, the district court did not err in dismissing the § 1983 claims against these defendants based on qualified immunity.

3. Defendants Smith, DeLeon, Lerner, and the Gorenflos

"In order to prevail on an action under § 1983, a plaintiff must show that he was deprived of a federal right by a person acting under color of state law." Griffin v. City of Opa-Locka, 261 F.3d 1295, 1303 (11th Cir. 2001). "Only in rare circumstances can a private party be viewed as a 'state actor' for section 1983 purposes." Harvey v. Harvey, 949 F.2d 1127, 1130 (11th Cir. 1992). In deciding whether a private party can be viewed as a state actor, we look to see whether any of three conditions are met:

> (1) the State has coerced or at least significantly encouraged the action alleged to violate the Constitution ("State compulsion test"); (2) the private parties performed a public function that was traditionally the exclusive prerogative of the State ("public function test"); or (3) the State had so far insinuated itself into a position of interdependence with the [private parties] that it was a joint participant in the enterprise[] ("nexus/joint action test").

Rayburn ex rel. Rayburn v. Hogue, 241 F.3d 1341,1347 (11th Cir. 2001) (quotation marks omitted) (alterations in original).

Plaintiffs do not allege that any of these defendants are state actors. Moreover, Plaintiffs do not allege any facts indicating (1) that the state coerced or encouraged these defendants to violate the Constitution, (2) that these defendants performed a public function, or (3) that these defendants are engaged in an interdependent relationship with the state such that they participated in a joint enterprise. Because Plaintiffs have not alleged facts indicating that any of these defendants were state actors, the district court did not err in dismissing the § 1983 claims against these defendants.

4. Defendants Bolar, Gardner, and Spaziano

Plaintiffs' amended complaint does not allege that these defendants performed any acts in connection with the alleged deprivation of Plaintiffs' constitutional

rights. Plaintiffs list these defendants in their complaint but fail to allege what actions they performed, what constitutional rights they violated, or how they violated those rights. Accordingly, the district court did not err in dismissing the § 1983 claims against these defendants.

B. Younger Abstention

"Under [Younger] and its progeny, federal district courts must refrain from enjoining pending state court proceedings except under special circumstances." Old Republic Union Ins. Co. v. Tiflis Trucking Co., 124 F.3d 1258, 1261 (11th Cir. 1997). "Although Younger concerned state criminal proceedings, its principles are fully applicable to noncriminal judicial proceedings when important state interests are involved." 31 Foster Children v. Bush, 329 F.3d 1255, 1274 (11th Cir. 2003) (quotation marks omitted). A court may abstain from granting injunctive relief under Younger where: (1) the state proceeding is ongoing; (2) the proceeding implicates an important state interest; and (3) there is an adequate opportunity to raise a constitutional challenge in the state court proceedings. Middlesex County Ethics Comm. v. Garden State Bar Assn, 457 U.S. 423, 432, 102 S. Ct. 2515, 2521 (1982). The Supreme Court has recognized, in the context of Younger abstention, that family relations and child welfare are important states interests. Moore v. Sims, 442 U.S. 415, 435, 99 S. Ct. 2371, 2383 (1979) ("Family relations are a traditional area of state concern."). Moreover, a federal court should assume that state procedures offer an adequate opportunity to raise constitutional issues,

absent unambiguous authority indicating otherwise. 31 Foster Children, 329 F.3d at 1279. After reviewing the state court docket, the district court concluded that state court proceedings were still ongoing at the time Plaintiffs filed their complaint. Plaintiffs do not challenge this finding on appeal. Therefore, the first Middlesex factor is applicable. Plaintiffs allege that their case arose primarily from a custody disputes involving allegations of child abuse. Because family relations and matters of child custody are important state interests, the second Middlesex factor is satisfied. Considering the final Middlesex factor, Plaintiffs did not allege any facts indicating they that were precluded from raising their constitutional concerns in the state court proceedings. Therefore, the district court was justified in assuming that state procedures offer an adequate opportunity to raise constitutional issues. See id. Because all of the Middlesex factors are implicated in this case, the district court did not abuse its discretion by abstaining under Younger.[1]

C. Plaintiffs' Claims Under 42 U.S.C. § 19843 nm

[1] We note that it is unclear whether Plaintiffs asked the district court to enjoin state court proceedings concerning the real estate dispute between Plaintiffs Taylor and Fox and Defendants Spaziano and Lerner. To the extent such relief was requested, it is unclear whether Younger would apply because Plaintiffs have not alleged sufficient facts to determine whether the dispute implicated important state interests. Nonetheless, any claim for injunctive relief regarding the real estate dispute would be properly dismissed because Plaintiffs failed to allege sufficient facts indicating the constitutional rights violated or how those rights were violated

Sections 1 and 2 of § 1984 were declared unconstitutional by the Supreme Court. See Civil Rights Cases, 109 U.S. 3, 25-26, 3 S. Ct. 18, 32 (1883). The remaining sections were repealed by Congress in 1948. See Act of June 25, 1948, ch. 645, § 21, 62 Stat. 862. Accordingly, the district court properly dismissed Plaintiffs' claims under § 1984.

D. Plaintiffs' Claims Under 42 U.S.C. §§ 1985-1986

The elements of a cause of action under § 1985(3) are: (1) a conspiracy, (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy, (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." Trawinski v. United Techs., 313 F.3d 1295, 1299 (11th Cir. 2002) (quotation marks omitted). Moreover, a plaintiff must show that the defendants were motivated by racial or class-based "invidiously discriminatory animus." Griffin v. Breckenridge, 403 U.S. 88, 102, 91 S. Ct. 1790, 1798 (1971). Section 1986 conspiracy claims are "derivative of § 1985 violations." Park v. City of Atlanta, 120 F.3d 1157, 1159-60 (11th Cir. 1997). Because Plaintiffs failed to allege that they are members of a protected class or that the defendants were motivated by racial or class-based "invidiously discriminatory animus," Plaintiffs' § 1985 claims must fail.

Because § 1986 claims are derivative of § 1985 claims, Plaintiffs' § 1986 claims must fail as well. Accordingly, the district court did not err in dismissing those claims.

E. Plaintiffs' Claims Under 4 U.S.C. §§ 101-102

These statutes, relating to oath requirements for certain state officials, do not create a private cause of action. Accordingly, the district court did not err in dismissing those claims.

F. Plaintiffs' Claims Under 18 U.S.C. §§ 4, 241-242, and 2382-2383

Criminal statutes generally do not provide a private cause of action. See Love v. Delta Air Lines, 310 F.3d 1347, 1352-53 (11th Cir. 2002). Because these are all criminal statutes, the district court did not err in dismissing those claims.

G. Plaintiffs' Claims for Breach of Agreement

Plaintiffs appear to allege that certain defendants violated the divorce decree and marital settlement between Plaintiff Chen and Defendant DeLæon. This agreement was reduced to an order of the family court. In effect, Plaintiffs request that the district court enforce an order entered by the state court. Because it would have been improper for the district court to grant such relief, the district court did not err in dismissing those claims.

II. Plaintiffs Claims for Violation of Fla. Stat. § 39.0132

This statute governs the state's maintenance of certain records. It appears to be designed for the protection of the public, and nothing indicates that it creates a private cause of action. See Love, 310 F.3d at 1352-53. Because the statute does not create a private cause of action, the district court did not err in dismissing those claims.

I. Plaintiffs' Claims for Violation of Fifth Amendment

Because Plaintiffs did not allege that any defendants were federal officials, claims brought under the Fifth Amendment were properly dismissed. See Riley v. Camp, 130 F.3d 958, 972 n.19 (11th Cir. 1997) ("The Fifth Amendment obviously does not apply here—the acts complained of were committed by state rather than federal officials."). To the extent that these claims could be construed as claims under 42 U.S.C. § 1983 for violations of the Fourteenth Amendment, see Porter v. White, 483 F.3d 1294, 1297 n.1 (11th Cir. 2007) (referring to party's Fifth Amendment claims against non-federal officials as claims under the Fourteenth Amendment), the claims would be properly dismissed for the reasons already discussed. Accordingly, the district court did not err in dismissing those claims.

It is somewhat unclear whether Appellants raise the merits of the district court's order granting the defendants' motions to dismiss as an issue on appeal.

As discussed, the district court did not err in dismissing Plaintiffs' complaint on the grounds enumerated in its order. Thus, to the extent that Appellants raise this issue, we conclude that it lacks merit.

II. Denial of Motion for Recusal

We review a district court judge's decision whether to recuse herself for abuse of discretion. Thomas v. Tenneco Packaging Co., 293 F.3d 1306, 1319-20 (11th Cir. 2002). Under 28 U.S.C. § 455(a), a judge "'shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.'" Bolin v. Story, 225 F.3d 1234, 1239 (11th Cir. 2000) (quoting 28 U.S.C. § 455(a)). This standard is objective, "and requires the court to ask whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." Id. (quotation omitted). "[E]xcept where pervasive bias is shown, a judge's rulings in the same or a related case are not a sufficient basis for recusal." Id.

Appellants' proffered grounds for recusal relate to unfavorable rulings issued by the district court in this case or previous cases. Specific instances include the district court's failure to grant Plaintiffs' petitions for a writ of mandamus to the state courts and a ruling in a previous case that the Plaintiffs characterize as an incorrect ruling on the Rooker-Feldman doctrine. The Plaintiffs have not demonstrated pervasive bias on the part of the

district court. Because Plaintiffs' argument for recusal is based on their disagreement with the district court's rulings in this case or related cases, Plaintiffs have failed to demonstrate a sufficient basis for recusal.

Our review of the record reveals no indication that the district court judge's impartiality could reasonably have been questioned. Accordingly, we conclude that the district court did not abuse its discretion in denying Plaintiffs' motions for recusal.

III. Denial of Motion for Leave to Amend the Amended Complaint

We generally review the denial of a motion to amend a complaint for an abuse of discretion, but we review questions of law de novo." Williams v. Bd. of Regents of Univ. Sys. of Ga., 477 F.3d 1282, 1291 (11th Cir. 2007) (citation omitted). Thus, when a district court denies leave to amend on the basis that amendment would be futile, we review that decision de novo. Cockrell v. Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007). Under Fed. R. Civ. P. 15(a), a party may amend its pleading once as a matter of course before being served with a responsive pleading. Fed. R. Civ. P. 15(a)(1). In all other cases, the party must obtain the court's leave or the other party's consent before amending its pleading a second time. Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." Id. "Unless a substantial reason exists to deny leave to amend, the discretion of the District Court is not broad enough to permit denial."

Fla. Evergreen Foliage v. E.I. DuPont De Nemours and Co. 470 F.3d 1036, 1041 (11th Cir. 2006) (quotation marks and alteration omitted). "A motion to amend may be denied on numerous grounds such as undue delay, undue prejudice to the defendants, and futility of the amendment." Id. (quotation marks and alteration omitted). An amendment is futile where the amended complaint would still be subject to dismissal. Hall v. United Ins. Co. of Am., 367 F.3d 1255, 1262-63 (11th Cir. 2004).

Plaintiffs, having already amended their complaint once, allege that they would make out claims under the Fifth and Fourteenth Amendments, as well as claims of fraud and violations of ABA rules, if leave to amend their complaint again was granted. Plaintiffs' motions, however, do not indicate what law or facts their amendments would include, nor do they indicate how their amendments would cure the deficiencies in their complaint. Specifically, Plaintiffs fail to show they could provide information to defeat certain defendants' entitlement to judicial immunity or qualified immunity. Plaintiffs also fail to demonstrate how their amendments would show certain defendants that are private actors were actually state actors, as necessary to establish liability under 42 U.S.C. § 1983. Plaintiffs further fail to demonstrate how they would show certain defendants committed fraud. Moreover, the ethical rules prescribed by the ABA do not provide individuals with a private cause of action. Because Plaintiffs' amendments would not cure the

deficiencies present in their complaint, their amendments would be futile.

Our review of the record demonstrates that, even if Plaintiffs amended their complaint, they would not have been able to state a cause of action. Accordingly, any amendment by Plaintiffs would have been futile, and the district court did not err in denying Plaintiffs leave to amend the complaint.

IV. Objection to Order Striking Exhibit List and Motion to Unseal Documents

We review a district court's evidentiary rulings, including an order striking evidence from the record, for abuse of discretion. Hall, 367 F.3d at 1259. We will reverse a district court's decision only where substantial prejudice exists. Id. Because the issue before the district court was whether the complaint was properly dismissed under Fed. R. Civ. P. 12(b)(6) and Plaintiffs did not attach their evidentiary list to the complaint, the district court had no need to consider Plaintiffs' evidentiary list. See Grossman, 225 F.3d at 1231. As a result, Plaintiffs were not prejudiced by the district court's order striking the list. Moreover, because the evidence placed under seal was of a sensitive nature, the district court had a reasonable basis for sealing those exhibits.

We conclude that Plaintiffs were not prejudiced by the district court's order striking their exhibit list, and that the district court had a

reasonable basis for sealing certain exhibits filed by Plaintiffs. Accordingly, the district court did not abuse its discretion in striking the exhibit list or sealing certain exhibits.

V. Plaintiffs' Opportunity to Respond to Motions to Dismiss

"Pretrial orders on the conduct of litigation are reviewable only for abuse of discretion." Harrington v. Cleburne County Bd. of Educ., 251 F.3d 935, 938 (11th Cir. 2001). Moreover, [a] district court has inherent authority to manage its own docket so as to achieve the orderly and expeditious disposition of cases." Equity Lifestyle Prop., Inc. v. Fla. Mowing And Landscape Serv., Inc., 556 F.3d 1232, 1240 (11th Cir. 2009) (internal quotation marks omitted).

The record demonstrates that Plaintiffs were granted an extension of time within which to file their briefs in response to the defendants' motion to dismiss. Furthermore, the record demonstrates that the magistrate judges properly recused themselves because of their connections to counsel for certain defendants. The district court simply changed the case number as a matter of course to reflect the initials of the newly assigned magistrate judge. Because none of these actions were improper, the district court did not abuse its discretion.

Here, our review of the record shows that the district court did not deprive the plaintiffs of sufficient time within which to respond to the

defendants' motions to dismiss, and, thus, did not abuse its discretion.

VI. Denial of Motion to Stay State Court Proceedings

We review a district courts decision whether to stay state court proceedings for an abuse of discretion. In re Bayshore Ford Trucks Sales. Inc., 471 F.3d 1233, 1250 (11th Cir. 2006) We have explained that:

> The Anti-Injunction Act directs that a court of the United States may not grant an injunction to stay proceedings in a state court except: (1) as expressly authorized by Act of Congress; (2) where necessary in aid of its jurisdiction; or (3) to protect or effectuate its judgments. The Act functions as an absolute prohibition against federal court enjoinment of state court proceedings, unless the injunction falls within one of the specifically defined exceptions, and thereby prevents needless friction between state and federal courts.

Id. at 1249-50 (quotation marks, citations, and alteration omitted).

The record indicates that in their petitions for mandamus, requesting the district court to stay state court proceedings, Plaintiffs failed to articulate facts that would bring this case within any of the strict exceptions. Id. at 1250 (noting that" lower courts are to interpret these exceptions strictly"). Because

Plaintiffs did not provide the district court with any justification for staying state court proceedings, the district court did not abuse its discretion by denying Plaintiffs' requests to do so.

Conclusion

Because our review of the record demonstrates that Appellants' arguments lack merit, we *affirm*.

AFFIRMED[2]

[2] Appellants' motion to stay state court proceedings is DENIED

United States Court of Appeals
For the Eleventh Circuit

No. 09-11487
District Court Docket No.
08-01954-CV-ORL-22-GJK

ZINNIA I. CHEN, (Filed February 1, 2010)
biological mother of V.D. and D.D.,
CHARLIE H. DAVIS,
LEYDA E. CHEW,
MICHAEL TAYLOR,
MARY C. FOX,

Plaintiffs - Appellants,

versus

HON. KENNETH R. LESTER, JR.,
of the state of Florida, in his individual capacity,
CLIFTON H. GORENFLO,
attorney, licensed by the state of Florida,
RACHEL A. GORENFLO,
attorney, licensed by the state of Florida,
ROBERT N. LERNER,
attorney, licensed by the state of Florida,
LEE M. SPAZIANO,
realtor, licensed by the state of Florida,
DONALD F. ESLINGER, Sheriff, state of Florida, et. al.,

Defendants - Appellees.

Appeal from the United States District Court
For the Middle District of Florida

JUDGEMENT

It is hereby ordered, adjudged, and decreed that the attached opinion included herein by reference, is entered as judgment of this Court.

Entered: February 1, 2010
For the Court: John Ley, Acting Clerk
By: Gilman, Nancy

(Issued As Mandate)
June 2, 2010

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Case No. 6:08-cv-1954-Orl-22GJK

ZINNIA I. CHEN, CHARLIE H. DAVIS, LEYDA E. CHEW, MICHAEL TAYLOR and MARY C. FOX,

Plaintiffs,

-vs-

HON. KENNETH R. LESTER, JR.; CLIFTON H. GORENFLO; RACHEL A. GORENFLO; ROBERT *N.* LERNER; LEE M. SPAZIANO; CHUCK SMITH; HON. GEORGE A. SPRINKLE, IV; HON JOHN D. GALLUZZO; ELAINA BOLAR; CLAIRE F. OSCAR DEW; VICTOR GREGORY DELEON; DONALD F. ESLINGER; LYDIA GARDNER;

MARYANNE MORSE; MRINALINI AMIN; THOMAS CLEM; BARBARA HESS; HOLLY OCHS; KATIE TRICOMI; LAURA PHIPPS; MIKE NELSON and BILL GOSH,

Defendants.

(Filed March 19, 2009)

ORDER

I. INTRODUCTION

This cause comes before the Court for consideration of the following motions:

1. Plaintiffs Zinnia I. Chen's, Charlie H. Davis', Leyda E. Chew's, Michael Taylor's, and Mary C. Fox's (collectively "Plaintiffs") Second Motion for Recusal of Chief Judge Anne C. Conway and Motion for Recusal of Judge Karla R. Spalding (Doc. No. 123), filed on February 24, 2009;

2. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to the Hon. Kenneth R Lester, Jr. And John D. Galluzzo (Doc. No. 130), filed on February 26, 2009;

3. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Clifton H. Gorenflo, Rachel A. Gorenflo and Victor Gregory DeLeon (Doc. No. 131), filed on February 26, 2009;

4. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Donald F. Eslinger, Mrinalini Amin, Thomad Clem, Barbara Hess, Holly Odis, Mike Nelson and Bill Gosh (Doc. No. 132), filed on February 26, 2009;

5. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Chuck Smith (Doc. No. 134), filed on February 26, 2009;

6. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Robert N. Lerner (Doc. No. 136), filed on February 26, 2009;

7. Plaintiffs' Motion. for Leave to Amend the Amended Complaint as to Maryanne Morse (Doc. No. 138), filed on February 26, 2009;

8. Plaintiffs' Motion. for Leave to Amend the

Amended Complaint as to Lydia Gardner (Doc. No. 140), filed on February 26, 2009;

9. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Claire F. Oscar Dew (Doc. No. 142), filed on February 26, 2009;

10. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Elaina Bolar (Doc. No. 144), filed on February 26, 2009;

11. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Katie Tricomi and Laura Phipps (Doc. No. 146), filed on February 26, 2009;

12. Defendants John D. Galluzzo's and Kenneth R. Lester's Motion to Dismiss With Prejudice (Doc. No. 40), filed January 5, 2009;

13. Defendant Maryanne Morse's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 43), filed on January 6, 2009;

14. Defendant Claire F. Oscar Dew's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 45), filed on January 6, 2009;

15. Defendants Katie Tricomi's and Laura Phipps' Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 46), filed on January 6, 2009;

16. Defendant Elaina Bolar's Motion to Strike and Dismiss Plaintiffs' Complaint (Doc. No. 48), filed on January 6, 2009;

17. Defendants Clifton H. Gorenflo's, Rachel A. Gorenflo's, and Victor Gregory DeLeon's Motion to

Dismiss Plaintiffs' Amended Complaint (Doc. No. 53), filed on January 7, 2009;

18. Defendant Chuck Smith's Motion to Dismiss Plaintiffs' Amended Complaint With Prejudice (Doc. No. 65), filed on January 8, 2009;

19. Defendant Lydia Gardner's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 71), filed on January 12, 2009;

20. Defendants Donald F. Eslinger's, Mrinalini Amin's, Thomas Clem's, Barbara Hess', Holy Ochs', Mike Nelson's, and Bill Gosh's Motion to Dismiss (Doc. No. 86), filed on January 16, 2009;

21. Pro se Defendant Lee Spaziano's Motion to Dismiss Complaint for Damages and Injunctive Relief (Doc. No. 99), filed on January 22, 2009;

22. Pro se Defendant Robert N. Lerner's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 107), filed on February 2, 2009;

23. Defendant Elaine Bolar's Motion to Adopt Arguments in Memorandum of Co Defendant Lydia Gardner (Doc. No. 112), filed on February 10, 2009;[1]

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[1] After taking into consideration Plaintiffs' response in opposition (Doc. No. 113), the Court GRANTS Bolar's motion to adopt arguments of Co-Defendant Gardner.

24. Plaintiffs' Motion to Strike Defendant Lee M. Spaziano's Motion to Dismiss (Doc. No. 99), filed on February 26, 2009 (Doc. No. 129); and

25. Plaintiffs' Objections to this Court's Order (Doc. No. 126) and Motion to Unseal Documents (Doc. No. 148), filed on March 2, 2009.

Further, a review of the record shows the following activity: On February 26, 2009, Plaintiffs filed various responses in opposition to Defendants' motions to dismiss (Doc. *Nos.* 133, 135, 137, 139, 141, 143, 86 145.)

II. BACKGROUND

The sequence of events in this case is somewhat difficult to ascertain from the rambling and disjointed allegations of Plaintiffs' Amended Complaint. It appears that Plaintiffs' allegations arise out of a dependency proceeding filed in Seminole County Circuit Court involving Plaintiff Chen (No. P08-1077-DP). As indicated in the Amended Complaint, the dependency proceeding was filed because of an allegation that Chen had abused her minor children. (Doc. No. 4 ¶ 39.) Plaintiffs allege that on September 4, 2008, Judge Lester ordered that Chen's minor children be placed in the temporary custody or Chen's former husband, Defendant Victor DeLeon. (Id. at 1 42.)

Apparently upset with Judge Lester's ruling, Chen brought suit against a host of individuals involved in the state court proceeding, including judges, prosecutors, investigators, attorneys, and Chen's

former husband. The Amended Complaint seeks injunctive relief and damages. (*Id.* at pp. 30-31.)

The Court is frankly confused as to why Plaintiffs Taylor, Fox and Chew are taking part in the present action. The Amended Complaint fails to allege any facts pertaining to Chew, and Chen's and Davis's allegations arise out of a completely different set of facts than those that make up the claims concerning Taylor and Fox[2]

II. ANALYSIS

A. Plaintiffs' Responses to Defendants' Motions to Dismiss

The Court notes that February 23, 2009, was the deadline for Plaintiffs to respond to Defendants' Motions to Dismiss. On February 23, 2009, there were three responses left in the night drop box[3] in the clerk's office

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[2] Although far from clear, Foes and Taylor's allegations appear to stem from injuries suffered by Taylor after he was detained for attempting to serve process on Judge George A. Sprinkle, N in his courtroom. (Doc. No. 4 68-72.)

[3] The "night drop box" is available for paper filings fiom 7:30 a.m. to 8:30 a.m. and 4:00 p.m. to 5:00 p.m., Monday through Friday. When documents are delivered to the night drop box, the person making the delivery stamps the document and drops it into the box (it appears as RECEIVED with the date and time). The Clerk's office has an assigned person that checks the night drop box twice a day - once at 8:30 am. and again at 5:00 p.m. If there were filings left in the box, that person will deliver the document to the assigned docket clerk who will then write on the document "FILED, NIGHT DROP BOX" prior to scanning it and entering it on the docket.

and docketed into the case. (*See* Doc. Nos. 120, 121, & 122.) Some of Plaintiffs' responses in opposition to Defendants' motions to dismiss (Doc. Nos. 133, 135, 137, 139, 141, 143, & 145) also bear "RECEIVED" stamps dated February 23, 2009. However, the documents were delivered to the Clerk's office via courier on February 26, 2009. This suggests that the person filing the documents stamped the first page as "RECEIVED" using the night box stamp but did not actually drop the documents in the box. Plaintiffs are warned that any disingenuous attempts to circumvent the Court's filings deadlines will not be taken lightly and may result in the imposition of sanctions.

B. Plaintiffs' Second Motion for Recusal

Once again, Plaintiffs fail to demonstrate a sufficient basis for the undersigned's recusal. Other than Plaintiffs' conclusory allegations, nothing in the record supports a finding that the undersigned's impartiality might reasonably be questioned. Accordingly, Plaintiffs' request that the undersigned recuse herself will be denied. Plaintiffs' request that Magistrate Judge Karla R. Spalding recuse herself is moot as the case has already been reassigned to Magistrate Judge David A. Baker. (*See* Doc. Nos. 125 & 127.)

The Court finds it necessary to warn Plaintiffs that they cannot continue to present baseless recusal motions in a serial fashion. If this continues, the

Court will have to consider what sanctions may be appropriate.[4]

C. Plaintiffs' Motions to Amend

Plaintiffs have requested leave to file a third amended complaint. Plaintiffs request leave to amend to add causes of action for Violations of the Fifth and Fourteenth Amendments adding "punitive damages, fraud, and ABA violations . . . ." The Court notes that Plaintiffs 'took advantage of their opportunity to amend their complaint once before a responsive pleading was served. (*See* Doc. No. 4.) It would be inappropriate to allow the filing of another amended complaint in this case because such a filing would be unduly prejudicial to the defendants and futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) (futility of amendment is a ground upon which leave to amend can be denied). There is no reason to believe that Plaintiffs have information that would correct the substantive deficiencies. Furthermore, another amendment would unquestionably defeat Defendants' attempts to obtain a prompt resolution of the claims against them. *See* Fed. R. Civ. P. 1. Accordingly, Plaintiffs' Motions to Amend (Doc. Nos. 130, 131, 132, 134, 136, 138, 140, 142, 144, & 146) will be denied.[5]

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[4] Nothing in this Order is intended to chill the filing of legitimate recusal motions. However, in the instant motion, all Plaintiffs have done is present arguments that this Court has already decided

[5] Additionally, the Court notes that Plaintiffs' motions to amend fail to indicate compliance with Local Rule 3.01(g). In his January 30, 2009 Order, Magistrate Judge Gregory J. Kelly admonished Plaintiffs for failing to comply with this rule and

D. Plaintiffs' Objections to this Court's Order (Doc. No. 126) and Motion to Unseal Documents

Plaintiffs have inundated this Court with multiple pleadings challenging the propriety of nearly all of the undersigned's orders in words that are rambling, disjointed, and at times incomprehensible. (*See* Doc. Nos. 89, 101, 113.) Nevertheless, the Court has undertaken a de novo review of the record in light of Plaintiffs' most current objection. After doing so, and being mindful that a pro se plaintiffs complaint must be construed more liberally than one prepared by an attorney, the Court has no hesitancy in concluding that Plaintiffs' objections to this Court's order (Doc. No. 126) are baseless and due to be denied.

On February 26, 2009, this Court entered an order striking Plaintiffs' Second Exhibit List and placing Doc. No. 89, Attachment 1, and Doc. No. 119 under seal. (See Doc. No. 126.) Plaintiffs now ask the undersigned to reconsider that decision, claiming that no evidentiary hearing was held prior to the Court's ruling. However, the Court finds that the highly sensitive nature of the information contained in the documents, such as nude photographs of Plaintiff Chen's minor sons, justifies keeping it under seal. *See Rossbach v. Rundle*, 128 F. Supp. 2d 1348, 1352 (S.D. Fla. 2000) ("It is appropriate to seal certain records when those particular records contain

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warned Plaintiffs that it would make only "one limited exception." (Doc. No. 105.) This Court is not pleased that, after a clear admonition, Plaintiffs continue to violate the Local Rules.

highly sensitive and potentially embarrassing personal information about individuals."). Accordingly, Plaintiffs' Motion to Unseal will be denied.

E. Motions to Dismiss

a. Standard

In a complaint, the plaintiff must present a short and plain statement of the claim showing that he is entitled to relief. Fed. R. Civ. P. 8(a)(2). On a motion to dismiss under Fed. R. Civ. P. 12(b)(6), the allegations of the complaining party are to be accepted as true. *Grossman v. NationsBank, NA.*, 225 F.3d 1228, 1231 (11th Cir. 2000); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). While the allegations must be plausible and sufficient to raise a right to relief above the speculative level, a short and plain statement of the claim is all that is required to survive a motion to dismiss. *Twombly*, 550 U.S. at 555-57.

However, the Eleventh Circuit applies a higher pleading standard to cases brought against individual state actors under 42 U.S.C. § 1983. *all? Ines. v. County of Escambia*, 132 F.3d 1359, 1367 (11th Cir. 1998). "[W]hile Fed. R. Civ. P. 8 allows a plaintiff considerable leeway in framing [the] complaint," the Eleventh Circuit "require[s] that a § 1983 plaintiff allege with some specificity the facts which make out [the] claim " *Id.* (citations omitted). The higher pleading standard assists the Court in qualified immunity cases because the Court must determine from the facts alleged whether an individual defendant violated a clearly established constitutional right. *Id.*

Pro se complaints are held to "less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (quoting *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)).

b. *Rooker-Feldman* Doctrine

A number of Defendants contend that this Court lacks subject matter jurisdiction over Plaintiffs' Amended Complaint under *the Rooker-Feldman* doctrine. (Doc. Nos. 43, 45, 46, 48, 53, 65, 71, 86, & 107.) Generally speaking, the *Rooker-Feldman* doctrine bars federal district courts from reviewing state court decisions. According to prior Supreme Court precedent, the *Rooker-Feldman* doctrine is "confined to cases of the kind from which the doctrine acquired its name: cases brought by state- court losers complaining of injuries caused by state- court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basis Indus. Corp.*, 544 U.S. 280, 284 (2005). Additionally, the Court notes a recent decision of the Eleventh Circuit, *Nicholson v. Shafe*, case nos. 08-11426, 08-13058, 2009 WL 385579 (11th Cir. Feb. 18, 2009), addressing the import of *Exxon Mobil* on its *Rooker-Feldman* jurisprudence.

In *Nicholson*, appellants filed a lawsuit in Georgia state court seeking an accounting of profits relating to a copyright claim under state law. *Id. at* * *1*. After losing at trial, appellants filed an appeal to the Georgia appellate

court. *Id.* While the appeal remained pending, appellants filed a declaratory judgment action in federal court requesting an accounting under federal law. *Id.* The district court dismissed appellants' case for want of jurisdiction under the *Rooker-Feldman* doctrine. *Id.* at *3. On appeal, the Eleventh Circuit departed from its use of the four-factor test set forth in *Amos v. Glynn County Bd. Of Tax Assessors*, 347 F.3d 1249, 1266 n.11 (11th Cir. 2003) in determining whether the *Rooker- Feldman* doctrine bars federal court jurisdiction. Instead, the court choose to adhere to the boundaries delineated by the Supreme Court in *Exxon Mobil*. *See Nicholson*, 2009 WL 385579 at *6 "*Exxon Mobil made it* clear that the state court must have rendered judgment before the district court proceeding commenced."). The court held that because appellants commenced the federal district court action before the end of state proceedings in Georgia, *the Rooker-Feldman* doctrine did not apply. *Id.* at *6-7.

A review of the state court record in the present action makes clear that Plaintiffs commenced this action before the end of the state court proceedings. Accordingly, in light of both *Exxon Mobil* and *Nicholson*, the Court finds that the *Rooker- Feldman* doctrine does not apply.

c. Claims for Injunctive Relief - Younger Abstention

Additionally, Defendants urge this Court to dismiss the Amended Complaint on the basis of the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971). (Doc. Nos. 40, 43, 45, 46, 48, 53, 65, 71, 86, & 107.) Under

Younger and its progeny, federal courts must abstain from interfering with ongoing state criminal proceedings absent extraordinary circumstances. *See Arkebauer v. Kiley*, 985 F.2d 1351, 1357 (7th Cir. 1993). Although *Younger* concerned state criminal proceedings, its principles are "fully applicable ' to noncriminal judicial proceedings when important state interests are involved." *Middlesex County Ethics Comm. v. Garden State Bar Ass in*, 457 U.S. 423, 432 (1982). Abstention in civil cases is appropriate where: (1) there is a pending state proceeding; (2) the state proceeding implicates important state interests; and (3) the state proceeding affords the plaintiff an adequate opportunity to raise constitutional *claims. See id.; 31 Foster Children v. Bush*, 329 F.3d 1255, 1274-75 (11th Cir. 2003).

According to the Eleventh Circuit, for abstention to be triggered, (1) "the federal injunction must create an undue interference with state proceedings" and (2) "the state proceedings at issue must involve certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions ...." *Weider v. Lepore*, 385 F.3d 1336, 1339 (11th Cir. 2004) (internal quotations and citations omitted). Thus, the *Younger* doctrine acts to prevent federal courts from being the grand overseers of state courts and court-like administration. *Id.* at 1341.

Plaintiffs filed their complaint in federal district court on November 18, 2008.[6] (Doc. No. 1.) At that

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[6] The date of filing of the federal complaint is the relevant date for purposes of determining Younger's applicability. *Liedel* tr.

point, Plaintiffs' state court case in Seminole County Circuit Court (No. P-08- 01077DP) was ongoing.[7] In addition, child welfare and protection is an important state interest. *See* Moore, 442 U.S. at 435 ("Family relations are a traditional area of state concern."). Thus, the first and second requirements for abstention are satisfied.

The remaining question is whether the state proceeding afforded Plaintiffs the opportunity to raise their constitutional claims. "Minimal respect for the state processes, of course, precludes any *presumption* that the state courts will not safeguard federal constitutional rights." *31 Foster Children*, 329 F.3d at 1279 (quoting *Middlesex*, 457 U.S. at 431) (emphasis in original). Thus, a federal court "should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *31 Foster Children*, 329 F.3d at 1279 (quoting *Pennzoil Co. v. Texaco*, Inc., 481 U.S. 1, 15 (1987)). Plaintiffs, having failed to raise their federal claims in the ongoing state proceedings, must overcome this initial presumption by demonstrating that the state remedies are inadequate. *Butler v. Ala. Judicial Inquiry Comm'n*, 261 F.3d 1154, 1159 (11th Cir. 2001).

In the present case, Plaintiffs have failed to carry their burden of establishing that the procedures available in the state court dependency proceedings did not

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Juvenile Court of Madison County, Ala., 891 F.2d 1542, 1546 n.6 (11th Cir. 1990)

[7] According to the Seminole County Court's docket sheet for case no. P08 1077 DP, the state proceedings ended on February 24, 2009.

provide an adequate opportunity for them to raise their constitutional claims. Further, Plaintiffs essentially seek to overturn the state court Judges' rulings in Plaintiff Chen's dependency case. Thus, the injunctive relief sought by Plaintiffs is exactly the sort of federal-court interference of state court proceedings that *the Younger* doctrine seeks to avoid. *See 31 Foster Children*, 329 F.3d 1255, 1279 ("... taking the responsibility for a state's child dependency proceedings away from state courts and putting it under federal court control constitutes federal court oversight Of state court operations, even if not framed as direct review of state court judgments that is problematic, calling for *Younger* abstention.") (internal quotations omitted). Therefore, pursuant to *Younger* and its progeny, the Court will dismiss Plaintiffs' claims for injunctive relief. However, with respect to the damages claims against Defendants, the appropriate action based on *Younger* abstention is a *stay*. *See Quackenbush v. Allstate Ins. Co.*, *517* U.S. 706, 721 (1996); *Prather v. Norman*, 901 F.2d 915, 919 (11th Cir. 1990). A stay will not be entered here, however, because the state proceedings have ended and, as discussed below, Plaintiffs' damages claims should properly be dismissed on other grounds.

d. Claims for Damages
i. Defendants Lester and Galluzzo

In their Amended Complaint, Plaintiffs' allegations against Seminole County Circuit Judges Lester and Galluzzo appear to stem from a dependency proceeding filed in Seminole County Circuit Court. (Doc. No. 4, 1140-42.) Although it is not completely clear, Plaintiffs apparently seek to challenge Defendants' child

custody determinations.[8] Defendants Lester and Galluzzo are being sued in their individual capacity only. (*Id.* at 2.) Based on the facts alleged, Judges Lester and Galluzzo are entitled to judicial immunity for the § 1983 claims against them in their individual capacities. Judges acting in their judicial capacity are absolutely immune from damages suits. *Mirles v. Waco*, 502 U.S. 9, 11 (1991) ("Judicial immunity is an immunity from suit, not just from ultimate assessment of damages." (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526-27 (1985))). A judge's actions are taken in his judicial capacity if (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial *capacity*. *Sibley v. Lando*, 437 F.3d 1067,1070 (11th Cir. 2005). "This immunity applies even when the judge's acts are in error, malicious, or were in excess of his or her jurisdiction." *Id.* (quoting *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000)). Furthermore, the immunity is retained even if it is alleged that the judge conspired with other parties to bring about a deprivation of another's rights. Dykes v. Hosemann, 776 F.2d 942, 946 (11th Cir. 1985) (en banc) (citations omitted) Immunity may be overcome only (1) where the judge has not acted within his judicial capacity or (2) where the judge's actions, though judicial in nature,

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[8] In the Amended Complaint, Plaintiffs state: " . . . [In lieu of eight erroneous hearings and multiple quasi-judicial rulings rendered thereafter, neither Defendant Hon. Lester Jr. nor Hon. Galluzzo moved to restore custody of Plaintiff Chen's minor children." (Doc. No. 4 142.) Later, Plaintiffs allege that "the custody of Chen's minor children has still not been restored to Plaintiff Chen." (*Id. at* 163.)

are taken in the complete absence of all jurisdiction over the subject matter. Stump v. Sparkman, 435 U.S. 349, 356-57 (1978) (citing Bradley v. Fisher, 80 U.S. 335, 351 (1871)).

Turning to the instant case, the conduct of which Plaintiffs complain, specifically Judges Lester's and Galluzzo's determination of matters involving child custody proceedings properly before them, as well as their entry of orders in the case, are quintessential judicial functions. Furthermore, as Plaintiffs Chen, Taylor, and Fox were all parties in cases over which either Judges Lester and Galluzzo presided, Plaintiffs were clearly dealing with Judges Lester and Galluzzo in their judicial capacity. The allegations in the Amended Complaint appear to be based on little more than Plaintiffs' disagreement with the conduct and outcome of the proceedings. Therefore, judicial immunity shields Judges Lester and Galluzzo from Plaintiffs' 'claims for monetary relief.

H. Defendant Morse

According to the Amended Complaint, Morse functions as "'Clerk of the Court' of the records department for Seminole County." (Doc. No. 4 1 43.) Although it is far from clear, the allegations appear to suggest that Morse was a "co-conspirator" who allegedly refused to allow Chen "to inspect or copy official records in support of the purported child abuse allegations ...." (Id.) Also, the Amended Complaint appears to make some sort of allegation that Morse "converted" certain color photographs into black and white prior to a

"contrived" hearing held on September 4, 2008, before Judge Lester. (Id. at 44.)

Morse contends that the claims against her should be dismissed because she is entitled to qualified immunity. "Clerks of court and their agents are [to] be entitled to qualified immunity from liability if they were acting pursuant to their lawful authority and following in good faith the instructions or rules of the court and were not in derogation of these instructions or rules." Powell v. Kaplan, No. 08-60473-CIV, 2008 WL 1995088 at *4 (S.D. Fla. May 7, 2008).

It is clear from a review of the Amended Complaint that any claims presented by Plaintiffs against Morse relate to actions this defendant undertook on behalf of the state court during Chen's dependency proceedings either in accordance with orders of a state court or pursuant to authority granted her by state law. Accordingly, the Court finds that Morse is entitled to qualified immunity and the claims for monetary relief against her must be dismissed.

iii. Defendant Dew

Though it is hard to discern, Plaintiffs seem to sue Dew for her role in the state court dependency proceedings involving Plaintiff Chen. (See Doc. No. 4 11146, 58.) The allegations appear to suggest that Dew "manufactured" a "Petition for Dependency" on September 16, 2008. (Id. at ¶ 46.) According to Dew, she is employed as an attorney for the Florida

Department of Children and Families ("DCF") and was "charged with the responsibility of representing the interests of the State of Florida in the Seminole County dependency proceeding involving Plaintiff Chen's two minor children." (Doc. No. 45 pp. 8-9.)

Dew argues that the claims against her are barred by prosecutorial or "quasi-judicial" immunity.[9] (Doc. No. 45 pp. 8-10.) Prosecutors are absolutely immune from liability in § 1983 suits brought against prosecutorial actions that are "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. at 430; *see also Rivera v. Leal*, 359 F.3d 1350, 1353 (11th Cir. 2004) ("A prosecutor is entitled to absolute immunity for all actions he takes while performing his function as an advocate for the government."). The Supreme Court has made clear that "absolute immunity may not apply when a prosecutor is not acting as 'an officer of the court,' but instead is engaged in other tasks, say investigative or administrative tasks." *Van De Kamp v. Goldstein*, 129 S. Ct. 855, 861 (2009) (citing *Imbler*, 424 U.S. at 431 n.33.)

At this juncture, the Court declines to conduct an analysis regarding whether Dew is entitled to prosecutorial immunity as Dew's specific function in the dependency proceeding remains unclear. Specifically,

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[9] Courts sometimes have described the prosecutor's immunity as a form of "quasi-judicial" immunity and referred to it as derivative of the immunity of judges. *See Imbler v. Pachtman*, 424 U.S. 409, 420 (1976).

the Court is unable to determine whether Dew performed prosecutorial functions connected with the initiation and pursuit of the child dependency proceedings.

Nevertheless, the Court finds that Dew is entitled to qualified immunity. The purpose of the doctrine of qualified immunity is to protect government officials not only from liability and damages, but also from lawsuits brought against them in their individual capacities. *See Marsh v. Butler County*, 268 F.3d 1014, 1022 (11th Cir. 2001) (en banc); *Rivas v. Freeman*, 940 F.2d 1491, 1494-95 (11th Cir. 1991). Thus, whether or not a defendant is entitled to qualified immunity should be determined "at the earliest possible stage of the litigation." *Johnson v. Breeden*, 280 F.3d 1308, 1317 (11th Cir. .2002) (citations omitted). To receive qualified immunity, governmental officials must first prove they were acting within their discretionary authority. *See Vinyard v. Wilson*, 311 F.3d 1340, 1346 (11th Cir. 2002). In the present action, it is clear that Dew was acting within the scope of her discretionary authority as an attorney for the State of Florida.

Once established that the official was acting within the scope of his or her discretionary authority, the burden shifts to the plaintiff to show that qualified immunity is not appropriate. *Gonzalez v. Reno*, 325 F.3d 1228, 1234 (11th Cir. 2003). The Supreme Court has set forth a two-part analysis for determining whether qualified immunity is appropriate. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). First, the court must ask "this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a

constitutional right?" *Id.* "[I]f a violation could be made out on a favorable view of the parties' submissions, the next, sequential step is to ask whether the right was clearly established." *Id.*

As noted, the majority of Plaintiffs' allegations are largely incomprehensible. The only 'allegations pertaining to Dew seem to suggest that Dew manufactured a "Petition for Dependency' in the state court proceedings. This allegation, by itself, fails to show any violation of Plaintiffs' constitutional rights.

Even assuming that a constitutional violation occurred, Plaintiffs have failed to show that the right was clearly established at the time of the violation. In qualified immunity cases, "the burden is on the plaintiff to show that, when the defendant acted, the law established the contours of a right so clearly that a reasonable official would have understood his acts were unlawful." *Post v. City of Ft. Lauderdale,* 7 F.3d 1552, 1557 (11th Cir. 1993), *modified,* 14 F.3d 583 (11th Cir. 1994). The standard is high and qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. *Lassiter v. Ala. A & M Univ.,* 28 F.3d 1146, 1149 (11th Cir. 1994) ("Because qualified immunity shields government actions in all but exceptional cases, courts should think long and hard before stripping defendants of immunity.").

Plaintiffs have not shown that Dew violated any clearly established statutory or constitutional rights of Plaintiffs of which a reasonable person would have known. Dew was clearly an employee of a public entity and entitled to the protections afforded by qualified immunity.

Accordingly, Dew's Motion to Dismiss will be granted on this basis.

iv. Defendants Tricomi and Phipps

Tricomi and Phipps are investigators employed by the Child Protection Team, a program of the Florida Department of Health. (Doc. No. 46 p. 4.) They are charged with the responsibility of investigating incidents of child abuse on behalf of the State of Florida. *Id.* at 9.) Both Tricomi and Phipps are being sued in their individual capacity. (Doc. No. 4 p. 1.)

The allegations against Tricomi and Phipps are far from clear, but appear to arise out of their investigation of Chen's alleged abuse of her minor children. Specifically, Plaintiffs allege that "Chen's minor children were equally repeatedly coerced, interrogated and subsequently subjected to the repeated impartation' [sic] of child abuse complements [sic] of Defendants Amin, Tricomi, Phipps, Nelson, Gosh and DeLeon." (Doc. No. 4 I 48.)

As an initial matter, there is no dispute that both Tricomi and Phipps are state actors. Tricomi and Phipps are not, however, entitled to absolute immunity. It is true that state actors may be granted absolute immunity for those functions that are critical to the judicial process itself, such as initiating a prosecution. *Imbler*, 424 U.S. at 431. This protection, which has traditionally been available to prosecutors, has also been extended to social workers and child protective services investigators who have acted in a quasi-judicial or prosecutorial capacity. *See, e.g., Salyer v.*

Patrick, 874 F.2d 374 (5th Cir. 1989); *Vosburg v. Dept. of Social Servs.*, 884 F.2d 133 (4th Cir. 1989); *Meyers v. Contra Costa County Dept. of Social Servs.*, 812 F.2d 1154, 1157 (9th Cir. 1987). Prosecutors and others investigating criminal matters have no absolute immunity for their investigatory conduct, however. *Kalina v. Fletcher*, 522 U.S. 118, 126 (1997). Accordingly, social workers or others conducting investigations into child abuse allegations, such as Tricomi and Phipps, have no such immunity.

Tricomi's and Phipps' claims of entitlement to qualified immunity, however, have merit. The only allegation pertaining to Tricomi and Phipps in the entire thirty-one page complaint appears in paragraph forty-eight and seems to suggest that they subjected Chen's children to abuse. (*See* Doc. No. 4 ¶ 48.) Based on this lack of factual detail, the Court concludes Plaintiffs have not satisfactorily alleged that either Tricomi or Phipps violated their constitutional rights. Even assuming that a constitutional violation occurred, Plaintiffs have failed to show that the right was clearly established at the time of the violation. Tricomi or Phipps were both clearly employees of a public entity and entitled to the protections afforded by qualified immunity. Accordingly, Tricomi's and Phipps' Motion to Dismiss will be granted on this basis.

v. Defendant Bolar

According to Bolar, she is an employee of a private entity known as Children's Home Society and was called upon by the State to assist in the placement of Chen's children outside of the home. (Doc.

No. 48 ¶ 3.) Bolar moves to strike the complaint pursuant to Fed. R. Civ. P. 12(f), or alternatively to dismiss the complaint under Fed. R Civ. P. 12(b)(6) for failure to state a claim.

The Amended Complaint contains no allegations regarding Boles involvement in the alleged constitutional violations. Accordingly, Bolar's request to dismiss the Amended Complaint against her based on Rule 12(b)(6) will be granted.[10]

vi. Defendants Clifton R. Gorenflo, Rachel A. Gorenflo, and Victor Gregory DeLeon

According to the Amended Complaint, DeLeon is Plaintiff Chen's former husband. (Doc. No. 4 ¶ 25.) Aside from identifying Clifton and Rachel Gorenflo as counsel for DeLeon (*Id.* at 26), the Amended Complaint is devoid of any allegations regarding their involvement in the alleged constitutional violations. Further, Plaintiffs' allegations against DeLeon are largely nonsensical. It seems that Plaintiffs' complaint against DeLeon stems from his allegations that Plaintiff Chen had abused their children, which resulted in the placement of the children in DeLeon's custody. At best, the allegations seem to suggest that DeLeon failed to abide by lower state court orders regarding custody of their children. (*Id.* at ¶ 36-37.)

[10] As the Court will grant Bolar's Rule 12(b)(6) motion to dismiss, her motion to strike is rendered moot. For the same reason, Bolar's request to strike Chen's marital separation agreement is also moot.

In their motion, Clifton and Rachael Gorenflo and Delson assert that the claims against them are barred by the litigation privilege. Florida's litigation privilege affords absolute immunity for acts occurring during the course of a judicial proceeding. *Jackson v. BellSouth Telecomm.*, 372 F.3d 1250, 1274 (11th Cir. 2004). The Eleventh Circuit has mandated that "Florida's litigation privilege applies to the *state-law* claims adjudicated in federal court." Id. at 1274-75 (emphasis added). As the Court finds that all of Plaintiffs' state-law claims are meritless, Defendants' argument regarding the litigation privilege is rendered moot.

Defendants argue that Plaintiffs' § 1983 claims against them are- due to be dismissed because they are not state actors. In order to prevail on a civil rights action under § 1983, Plaintiffs must show that a person acting under color of state law deprived them of a federal right. *Griffin v. City of Opa Locka*, 261 F.3d 1295, 1303 (11th Cir. 2001). Supreme Court precedent indicates:

> State action requires both an alleged constitutional deprivation caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible, and that the party charged with the deprivation must be a person who may fairly be said to be a state actor.

Am. Mfrs. Mut Ins. Co. v. Sullivan, 526 U.S. 40, 50(1999) (internal quotations and citations omitted) (emphasis in original). "Only in rare circumstances

can a private party be viewed as a 'state actor' for section 1983 purposes." *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir.1992). Private parties may be viewed as state actors for § 1983 purposes if one of the following three tests is met:

> (1) the State has coerced or at least significantly encouraged the action alleged to violate the Constitution (State compulsion test); (2) the private parties performed a public function that was traditionally the exclusive prerogative of the State (public function test); or (3) the State had so far insinuated itself into a position of interdependence with the [private parties] that it was a joint participant in the enterprise (nexus/joint action test).

Rayburn ex rel. Rayburn v. Hogue, 241 F3d 1341, 1347 (11th Cir. 2001) (citations and internal quotation marks omitted).

In the instant case, Plaintiffs do not allege any facts suggesting that Clifton Gorenflo, Rachel Gorenflo, or DeLeon were encouraged by a state actor to institute dependency proceedings against Chen, acted jointly with a state actor, or that their conduct was "significantly affected with state involvement." *See Willis v. Univ. Health Servs., Inc.*, 993 F.2d 837, 840 (11th Cir.1993) (citations omitted). Moreover, "one who has obtained a state court order or judgment is not engaged in state action merely because [he] used the state court legal process." *Cobb v. Ga. Power Co.*, 757 F.2d 1248, 1251 (11th Cir. 1985). Accordingly, the Court finds that Plaintiffs have failed

to establish sufficient state action to support a § 1983 against Clifton Gorenflo, Rachel Gorenflo, and DeLeon. The motion to dismiss will be granted on this basis.

vii. Defendant Smith

According to the Amended Complaint, Smith is the principal at Faith Christian Academy where Chen's minor children were enrolled in school. (Doc. No. 4 1 31.) Plaintiffs seem to allege that Smith violated state court orders by removing Chen's children from school without her consent and transporting them to Seminole County authorities. (*Id. at* 114 35 37, 47.) Smith moves to dismiss the Amended Complaint pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. (Doc. No. 65 pp. 68.) Specifically, Smith argues that Plaintiffs have failed to state any facts to support their claim that Smith acted "for the government in such a way as to qualify as a state actor capable of violating Plaintiffs' Fifth Amendment rights." (*Id.* at p. 8.)

The Court finds that Plaintiffs have failed to allege sufficient state action to support a § 1983 against Smith. Specifically, Plaintiffs do not allege any facts suggesting that Smith was encouraged by a state actor to remove Chen's children from school, that Smith acted jointly with a state actor, or that Smith's conduct was "significantly affected with state involvement." *See Willis*, 993 F.2d at 840. Accordingly, Smith's motion to dismiss will be granted on this basis.

viii. Defendant Gardner

As stated in her motion to dismiss, Gardner is the Clerk of the Orange County Circuit Court. (Doc. No. 71 p. 1.) The Amended Complaint contains no allegations regarding Gardner's involvement in the alleged constitutional violations. Accordingly, Gardner's request to dismiss the Amended Complaint against her based on Rule 12(b)(6) will be granted.

ix. Defendants Winger, Amin, Clem, Hess, Ochs, Nelson, and Gosh

According to the Amended Complaint, Eslinger is the Sheriff of Seminole County. (Doc. No. 4. 1 27.) Ochs is a Child Protective Service supervisor with the Sheriffs Office. *(Id. at* ¶ 28.) Amin and Clem are Child Protective Services investigators for the Sheriffs Office. *(Id.* at111129-30.) Allegedly, Nelson is a deputy for the state of Florida and Gosh[11] is a sheriff for the State of Florida. *(Id.* at 1.) It is alleged that Hess is a Child Protective Services investigator for the Sheriffs Office. (Doc. No. 86 p. 3.) These Defendants are sued only in their individual capacities. (Doc. No. 4 p. 1.)

Allegedly, Eslinger and Ochs ordered Amin to invade Chen's residence on August 25, 2008, and again on

[11] According to the motion to dismiss, Gosh is a deputy who works in the Child Protective Services unit with the Seminole County Sheriffs Office. (Doc. No. 86 pp. 3-4.) As stated above, this factual inconsistency will be resolved in favor of Plaintiffs for purposes of the motion to dismiss.

September 3, 2008. (*Id.* at ¶¶ 33, 39.) Further, Plaintiffs allege that Eslinger, Ochs, Amin, and Clem "violated Plaintiffs Chen[s] and Davis[']s fundamental rights to 'substantive' and procedural 'due process' . . . with the denial of Plaintiffs having effective assistance of counsel present during the manufactured erroneous interrogation . . . "[12] (*Id.* at ¶ 34.) Later, it is alleged that Eslinger's, Ochs', Amin's, and Clem's actions violated state court orders. (*Id.* at ¶ 37.)

In their Motions to Dismiss, Eslinger, Amin, Clem, Hess, Ochs, Nelion, and Gosh contend that the claims against them should be dismissed because they are entitled to qualified immunity. The Court agrees. There is no dispute that Eslinger, Amin, Clem, Hess, Ochs, Nelson, and Gosh were acting within the scope of their discretionary authority as sheriffs, deputies, and investigators for the State of Florida. Again, it appears that Plaintiffs are attempting to assert a Fifth Amendment-based right to counsel. The Fifth Amendment guarantees that no person ... shall be compelled in any criminal case to be a witness

[12] The Court is unsure whether Plaintiffs are attempting to allege a claim that they were denied effective assistance of counsel under the Sixth Amendment or a violation of their Fifth Amendment right to counsel For present purposes, the Court will assume that Plaintiffs are attempting to assert a violation of their Fifth Amendment right to counsel However, even if they were alleging a Sixth Amendment claim, that claim would not succeed The Sixth Amendment provides that "Mil all *airninal* prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense." U.S. Const. amend VI (emphasis added). As this is a civil case, Plaintiffs have no Sixth Amendment right to counsel

against himself." U.S. Const. amend. V. "The Fifth Amendment protection against compelled self-incrimination provides the right to counsel at custodial interrogations." *Mich. v. Jackson*, 475 U.S. 625, 629 (1986). Custodial interrogation is defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant *way*." *Miranda v. Ariz.*, 384 U.S. 436, 444 (1966). As there is no allegation that either Chen or Davis were taken into custody or otherwise deprived of their freedom of action, the Fifth Amendment right to counsel is not implicated. As a result of the foregoing, the Court finds that Plaintiffs have not satisfactorily alleged that Eslinger, Amin, Clem, Hess, Ochs, Nelson, or Gosh violated their constitutional rights. Accordingly, Eslinger, Amin, Clem, Hess, Ochs, Nelson, and Gosh are entitled to qualified immunity for the § 1983 claims for monetary relief against them in their individual capacities. The motion to dismiss will be granted on this basis.

x. Pro Se Defendant Spaziano

Other than identifying Spaziano as a realtor licensed in the State of Florida, the Amended Complaint contains no allegations regarding Spaziano's involvement in the alleged constitutional violations. Accordingly, Spaziano's request to dismiss the Amended Complaint against him will be granted.

Plaintiffs request that this Court strike Spaziano's motion for failure to identify the basis for dismissal and failure to attach a memorandum of

legal authority. (Doc. No. 129 p.2). There is an obvious irony in such a request, given the fact that Plaintiffs fail to provide any citations to legal authority in their numerous filings in this Court. Although Spaziano does not name the specific Federal Rule of Civil Procedure under which he brings the instant Motion, it is clear by the language in his motion that he relies on Rule 12(b)(6). Therefore, Plaintiffs' motion to strike Spaziano's motion to dismiss will be denied.

xi. Pro Se Defendant Lerner

Lerner is identified in the caption as an attorney licensed by the State of Florida. (Doc. No. 4 p. 1.) The only allegations pertaining to Lerner in the Amended Complaint seem to suggest that he prepared a filing on behalf of Plaintiffs Taylor and Fox. (Doc. No. 4 ¶ 72.)

In his motion to dismiss, Lerner argues that the claims against him . are barred by the litigation privilege. As stated above, "Florida's litigation privilege applies to the *state-law* claims adjudicated in federal *court*." *Jackson,* 372 F.3d at 1274-75 (emphasis added). As the Court finds that all of Plaintiffs' state-law claims are meritless, Lerner's argument regarding the litigation privilege is rendered moot.

Lerner also moves to dismiss the Amended Complaint pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. (Doc. No. 65 p. 1.) Specifically, Lerner argues that Plaintiffs have failed to allege state action to support a § 1983 claim

against Lerner. (*Id* at 2-3.) The Court agrees. Plaintiffs do not allege any facts suggesting that Lerner was encouraged by a state actor to submit an erroneous filing on behalf of Plaintiffs' Taylor and Fox, that Lerner acted jointly with a state actor, or that Lerner's conduct was "significantly affected with state involvement." *See Willis*, 993 F.2d at 840.

Accordingly, Lerner's motion to dismiss will be granted on this basis.

e. Failure to State a Claim (All Counts)[13]

A number of the Defendants have moved to dismiss the Amended Complaint for failure to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6). (*See* Doc. Nos. 40, 43, 45, 46, 71, 86, & 65.) Before diving into the each of the eleven counts, it bears repeating that a pro se complaint, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers and can only be dismissed for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hughes v. Rowe*, 495 U.S. 5, 10 n.7 (internal quotations omitted).

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[13] The Court acknowledges that, in regard to Plaintiffs' damages claims, the appropriate action based on *Younger* abstention is a stay until the resolution of the state proceedings. However, granting a stay in this case would be futile since the state dependency proceedings ended on February 24, 2009. Accordingly, the Court will address the merits of Defendants' Motions to Dismiss.

In Count I of their Amended Complaint, Plaintiffs adopt the prior seventy-five paragraphs by reference, then state that the twenty-two defendants are liable for violating 42 U.S.C. §§ 1983-1986. (Id. at 1 76.) A thorough review of the pleadings reveals that no such claims can survive.

Plaintiffs have no viable claims under 42 U.S.C. § 1984. Sections one and two of § 1984 were declared unconstitutional by the Supreme Court in 1883, *see Civil Rights Cases*, 109 U.S. 3, 26 (1883), and sections three and four were repealed by Congress in 1948, *see* Act of June 25, 1948, ch. 645, § 21, 62 Stat. 862. Accordingly, Plaintiffs' § 1984 claim must be dismissed.

Plaintiffs' § 1985[14] claim is due to be dismissed as well. The Supreme Court has identified the elements of a § 1985(3) claim as "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." *United Bhd of Carpenters & Joiners of Am., Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983). Furthermore, in order to maintain a claim under § 1985(3), a plaintiff must

[14] This statute has three subparts: (1) preventing officer from performing duties; (2) obstructing justice; intimidating party, witness, or juror; and (3) depriving persons of rights or privileges. 42 U.S.C. § 1985. The Court presumes that the Plaintiffs' claims are made pursuant to 42 U.S.C. § 1985(3).

show that the defendants were motivated by racial or class-based "invidiously discriminatory animus." *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971); *see also Burrell v. Bd. of Tr. of Ga. Military Coll.*, 970 F.2d 785, 793-94 (11th Cir. 1992) (stating elements of a claim and noting that the narrow intent requirement of § 1985(3) "erects a significant hurdle for ... plaintiffs").

The only allegation pertaining to conspiracy within the Amended Complaint appears to suggest that Defendants Smith and DeLeon conspired to remove Plaintiff Chen's children from school without her consent. (Doc. No. 4 ¶ 147.) This bald assertion is not enough to pass constitutional muster. Specifically, Plaintiffs have not alleged that they are members of a protected class or that the Defendants' acts were motivated by racial or "invidiously discriminatory animus." *Gruen*, 403 U.S. 102. Accordingly, Plaintiffs have failed to state a Claim for relief based on § 1985(3).

Section 1986 provides a cause of action against anyone who has "knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do." 42 U.S.C. § 1986. Section 1986 conspiracy claims are "derivative of § 1985 violations." Park v. City of Atlanta, 120 F.3d 1157, 1160 (11th Cir. 1997). Because Plaintiffs' Amended Complaint fails to state a § 1985 claim, their § 1986 claim fails as well. See id (a § 1986 claim "requires the existence of a § 1985 conspiracy"). Accordingly, Plaintiffs' § 1986 claim must be dismissed.

After a thorough review of the pleadings, the Court finds that Plaintiffs' fail to state a valid claim for relief under § 1983 as well. Section 1983 is not a source of a substantive federal right, and therefore, to state a § 1983 claim, a plaintiff must point to a violation of a specific federal right. *See Whiting v. Traylor*, 85 F.3d 581, 583 (11th Cir. 1996). Because the only constitutional rights referred to in Count I are due process and equal protection, it appears that Plaintiffs are attempting to assert a § 1983 claim based on violations of these constitutional rights. (*See* Doc. No. 4 76.) However, as detailed below, both of these claims fail to pass constitutional muster.

Plaintiffs do not have a viable equal protection claim because they fail to allege intentional discrimination. *Burton v. City of Belle Glade*, 178 F.3d 1175, 1189-90 (11th Cir. 1999) (intentional discrimination required for equal protection claim when classification is not express). Plaintiffs also fail to identify anyone similarly situated who was treated differently. *See Jones v. Ray*, 279 F.3d 944, 946 (11th Cir. 2001) ("[T]o establish an equal protection claim, a plaintiff must demonstrate that (1) he is similarly situated with other persons who received more favorable treatment; and (2) his discriminatory treatment was based on some constitutionally protected interest such as race. ") (internal quotations omitted).

Even if the Court liberally construes Plaintiffs' Amended Complaint as 'claiming a violation of their due process rights, they have failed to state a constitutional violation. The Due Process Clause of the Fourteenth Amendment provides that no state "shall ... deprive any person of life, liberty, or property,

without due process of law." U.S. Const. amend. XIV, § 1. "Procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property." *Arrington v. Helms*, 438 F.3d 1336, 1347 (11th Cir. 2006) (internal quotations omitted) (quoting *Carey v. Piphus*, 435 U.S. 247, 259 (1978)). Thus, a claim alleging the denial of procedural due process under 42 U.S.C. § 1983 requires proof of three elements: "(1) a deprivation of a constitutionally-protected liberty or property interest; (2) state action; and (3) constitutionally-inadequate process." *Id.* (internal quotations omitted). A procedural due process violation is not complete, however, "unless and until the State fails to provide due process." *McKinney v. Pate*, 20 F.3d 1550, 1557 (11th Cir. 1994). Plaintiffs have failed to allege either a deprivation of a "constitutionally-protected liberty or property interest" or a "constitutionally inadequate process." Further, the Amended Complaint is devoid of any allegations concerning Plaintiffs' exhaustion of state remedies or facts indicating that the state deprived Plaintiffs of redress. Thus, Plaintiffs fail to sufficiently allege a violation of procedural due process.

Additionally, "[t]he substantive component of the Due Process Clause protects [only] those rights that are 'fundamental,' that is, rights that are 'implicit in the concept of ordered liberty.'" *Bowers v. Regier*, 422 F.3d 1255, 1264 (11th Cir. 2005) (quoting *McKinney*, 20 F.3d at 1556). The Eleventh Circuit has further explained that "fundamental rights are those rights created by the Constitution." *Greenbriar Village*,

L.L.C. v. Mountain Brook City, 345 F.3d 1258, 1262 (11th Cir. 2003). Additionally, in cases involving non-custodial relationships, such as here, a government actor's conduct that would amount to an intentional tort under state law only qualifies as a substantive due process violation if it is arbitrary or "shocks the conscience." *See Tinker v. Beasley*, 429 F.3d 1324, 1328-29 (11th Cir. 2005). Because Plaintiffs fail to allege the deprivation of a fundamental right, much less conduct that was arbitrary or "shocks the conscience," their substantive due process claim also fails on its face.

In Counts II and III, Plaintiffs rely on two federal statutes that require certain state officials to take the loyalty oath and provide rules for recording the oath. 4 U.S.C. §§ 101-102. Because neither of these federal laws create a substantive private cause of action, Counts II and III must be dismissed.

In addition, Plaintiffs allege that Defendants violated certain federal criminal statutes, including 18 U.S.C. § 4 (Count IV), 18 U.S.C. § 2382 (Count V), 18 U.S.C. § 2383 (Count VI), 18 U.S.C. § 242 (Count VII), and 18 U.S.C. § 241 (Count VIII). Generally, a private citizen has no authority to initiate a federal criminal prosecution. *Keenan v. McGrath*, 328 F.2d 610, 611 (1st Cir. 1964). None of the above-mentioned federal criminal statutes provide for a private right of action; Plaintiffs' reliance upon them is severely misplaced. Accordingly, Counts IV, V, VI, VII, and VIII are due to be dismissed.

In Count IX, Plaintiffs bring a state law claim for breach of agreement. Specifically, Plaintiffs allege that

Defendants Lester, Clifton and Rachel Gorenflo, Smith, Gallurzzo, Holar, Dew, DeLeon, Eslinger, Morse, Amin, Clem, Hess, Ochs, Tricomi, Phipps, Nelson, and Cosh breached the Seminole County Circuit Court's orders entitled "Final Judgment of Dissolution of Marriage" and the "Marital Settlement Agreement."[15] Even assuming that the orders were based upon an agreement between Plaintiff Chen and Defendant DeLeon, that agreement was reduced to an order of the family court. Presumably, once the order was entered, any agreement was merged in the order and a party can no longer bring a breach of contract action to enforce the agreement. This suggests that the only remedy is by way of a contempt proceeding. Therefore, Count IX will be dismissed.

Count X of Plaintiffs' Amended Complaint purports to state a cause of action for violation of Fla. Stat. § 39. In its entirety, Count X is simply a recitation of the exact wording of Fla. Stat. § 39.0132.[16] However, Fla. Stat. § 39 does not provide for a private civil right of action. Accordingly, Count X will be dismissed.

Count XI alleges a cause of action based on violation of Plaintiffs' Fifth Amendment rights. The

[15] Interestingly, Plaintiffs include both the "Final Judgment of Dissolution of Marriage" and the "Marital Settlement Agreement" in the middle of their Amended Complaint. (See Doc. No. 4 pp. 9-12.)

[16] Fla. Stat. § 39.0132, entitled, "Oaths, records, and confidential information," provides for the confidentiality of reports and information maintained by the state courts or governmental agencies with respect to child abuse and neglect matters.

Court finds that no relief is available to Plaintiffs under the Fifth Amendment since all Defendants are either state actors or private individuals. *See Riley v. Camp*, 130 F.3d 958, 972 n.19 (11th Cir. 1997) (the Fifth Amendment only applies to actions by federal officials). Therefore, Plaintiffs' Fifth Amendment claim is subject to dismissal.

Even if Defendants were not entitled to dismissal on any other basis, the Amended Complaint is subject to dismissal for failure to state a claim for which relief may be granted.[17] As a result, all eleven counts in the Amended Complaint must be DISMISSED WITH PREJUDICE. The present lawsuit is so clearly unmeritorious that granting any further leave to amend would be futile.

IV. CONCLUSION

Based on the foregoing, it is ORDERED as follows:

1. Plaintiffs' Second Motion for Recusal of Chief Judge Anne C. Conway and Motion for Recusal of Judge Karla R. Spalding (Doc. No. 123), filed on February 24, 2009, is *DENIED* IN PART and RENDERED MOOT IN PART. The Motion is DENIED insofar as it seeks the recusal of the undersigned, and RENDERED MOOT

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[17] In addition to the reasons for dismissal set out above, the Court finds that the Amended Complaint should be dismissed against each Defendant for failure to comply with Fed. R. Civ. P. 8(a), which requires that Plaintiffs set out a short and plain statement of a claim showing that they are entitled to relief.

insofar as it seeks recusal of Magistrate Judge Karla R. Spalding.

2. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to the Hon. Kenneth R. Lester, Jr. and John D. Galluzzo (Doc. No. 130), filed on February 26, 2009, is DENIED.

3. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Clifton H. Gorenflo, Rachel A. Gorenflo and Victor Gregory DeLeon (Doc. No. 131), filed on February 26, 2009, is DENIED.

4. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Donald F. Eslinger, Mrinalini Amin, Thomas Clem, Barbara Hess, Holly Odis, Mike Nelson and Bill Goch (Doc. No. 132), filed on February 26, 2009, is DENIED.

5. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Chuck Smith (Doc. No. 134), filed on February 26, 2009, is DENIED.

6. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Robert N. Lerner (Doc. No. 136), filed on February 26, 2009, is DENIED.

7. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Maryanne Morse (Doc. No. 138), filed on February 26, 2009, is DENIED.

8. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Lydia Gardner (Doc. No. 140), filed on February 26, 2009, is DENIED.

9. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Claire F. Oscar Dew (Doc. No. 142), filed on February 26, 2009, is DENIED.

10. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Elaina Bolar (Doc. No. 144), filed on February 26, 2009, is DENIED.

11. Plaintiffs' Motion for Leave to Amend the Amended Complaint as to Katie Tricomi and Laura Phipps (Doc. No. 146), filed on February 26, 2009, is DENIED.

12. Defendants John D. Galluzzo's and Kenneth R. Lester's Motion to Dismiss With Prejudice (Doc. No. 40), filed January 5, 2009, is GRANTED.

13. Defendant Maryanne Morse's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 43), filed on January 6, 2009, is GRANTED.

14. Defendant Claire F. Oscar Dew's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 45), filed on January 6, 2009, is GRANTED.

15. Defendants Kate Tricomi's and Laura Phipps' Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 46), filed on January 6, 2009, is GRANTED.

16. Defendant Elaina Bolar's Motion to Strike and Dismiss Plaintiffs' Complaint (Doc. No. 48), filed on January 6, 2009, is GRANTED.

17. Defendantd Clifton H. Gorenflo's, Rachel A. Gogenflo's, and Victor Gregory DeLeon's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 53), filed on January 7, 2009, is GRANTED.

18. Defendant Chuck Smith's Motion to Dismiss Plaintiffs' Amended Complaint With Prejudice (Doc. No. 65), filed on January 8, 2009, is GRANTED.

19. Defendant Lydia Gardner's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 71), filed on January 12, 2009, is GRANTED.

20. Defendants Donald F. Eslinger's, Mrinalini Amin's, Thomas Clem's, Barbara Hess', Holy Ochs', Mike Nelson's, and Bill Gosh's Motion to Dismiss (Doc. No. 86), filed on January 16, 2009, is GRANTED.

21. Pro se Defendant Lee Spaziano's Motion to Dismiss Complaint for Damages and Injunctive Relief (Doc. No. 99), filed on January 22, 2009, is GRANTED.

22. Defendant pro se Robert N. Lerner's Motion to Dismiss Plaintiffs' Amended Complaint (Doc. No. 107), filed on February 2, 2009, is GRANTED.

23. Defendant Elaine Bolar's Motion to Adopt Arguments in Memorandum of Co-Defendant Lydia Gardner (Doc. No. 112), filed on February 10, 2009, is GRANTED.

24. Plaintiffs' Motion to Strike Defendant Lee M. Spaziano's Motion to Dismiss (Doc. No. 99), filed on

February 26, 2009 (Doc. No. 129), is DENIED.

25. Plaintiffs' Objections to this Court's Order (Doc. No. 126) and Motion to Unseal Documents (Doc. No. 148), filed on March 2, 2009, is DENIED.

26. This case is DISMISSED WITH PREJUDICE.

27. The Clerk is directed to terminate all pending motions and deadlines, and to close this case.

28. In light of Plaintiffs' persistent history of filing baseless and largely incomprehensible pleadings which have impacted the resources of this Court, as well as of Defendants, the Clerk is directed not to accept for filing any future pleading submitted by Plaintiffs in this case, except for a notice of appeal.[18]

DONE and ORDERED in Chambers, in Orlando, Florida on March 18, 2009.

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[18] *See Bafford v. Tiep Apartments Assoc, Ltd*, No. 8:08-cv-724-T27TGW, 2008WL 1817333 at *4 (M.D. Fla. April 22, 2008) (directing clerk not to accept any additional filings except a notice of appeal after sua sponte dismissing pro se plaintiffs complaint with prejudice as patently frivolous, harassing, and vexatious).

Copies furnished to:

Counsel of Record

ANNE C. CONWAY

United States
District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 09-11487-HH

ZINNIA I CHEN, (Filed, May 25, 2010)
biological mother of V.D. and D.D.,
CHARLIE H. DAVIS,
LEYDA E. CHEW,
MICHAEL TAYLOR,
MARY C. FOX,
Plaintiffs - Appellants,

versus

HON. KENNETH R. LESTER, JR.,
of the state of Florida, in his individual capacity,
CLIFTON H. GORENFLO,
attorney, licensed by the state of Florida, RACHEL A.
GORENFLO,
attorney licensed by the state of Florida, ROBERT N.
LERNER,
attorney licensed by the state of Florida, LEE M.
SPAZIANO,
realtor, licensed by the state of Florida, DONALD F.
ESLINGER, Sheriff, state of Florida,

Defendants - Appellees,

On Appeal from the United States District Court for
the Middle District OF Florida

Before: TOJOFLAT, EDMONDSON and ANDERSON,
Circuit Judges,

PER CURIAM:

The amended petition for rehearing filed by the Appellants is DENIED.

ENTERED FOR THE COURT:
/s/ R. Lanier Anderson, United States Circuit Judge

No. 09-1542

In The

Supreme Court of the United States

ZINNIA I. CHEN, et al.,

Petitioners,

vs.

HON. KENNETH R. LESTER, JR., et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION OF CHUCK SMITH TO THE PETITION FOR WRIT OF *CERTIORARI*

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QUESTION PRESENTED

Did the Eleventh Circuit Court of Appeals err in affirming the decision of the United States District Court for the Middle District of Florida, Orlando Division, to dismiss the Petitioner's Amended Complaint with prejudice for failure to state a claim for which relief could be granted?

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STATEMENT OF THE CASE AND OF THE FACTS

The above captioned Petition for Writ of Certiorari is an effort by Zinnia I. Chen, Charlie H. Davis, Leyda E. Chew, Michael Taylor and Mary C. Fox (collectively, "Ms. Chen"), to have this Court review the Eleventh Circuit Court of Appeal's affirmance of the United States District Court for the Middle District of Florida's entry of a Final Judgment in favor of Chuck Smith ("Mr. Smith"), and the remaining Co-Respondents, pursuant to an order granting the various Co-Respondents' Motions to Dismiss with prejudice Ms. Chen's Complaint. The Eleventh Circuit's per curiam opinion is dated February 1, 2010. The District Court's order that was affirmed is dated March 19, 2009. Both documents are appropriately set forth in the appendix to the Petition.

Ms. Chen initiated the underlying lawsuit with the filing of a Complaint on November 18, 2008. (Document #1).[1] Before any responses to the Complaint were filed, Ms. Chen filed an Amended Complaint on December 8, 2008. (Document #4). It is this Amended Complaint that was the operative pleading on behalf of Ms. Chen at the District Court level, although the document itself is not identified as an Amended Complaint.

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[1] Document numbers refer to the numbers assigned to documents filed with the District Court.

The various Co-Respondents all filed Motions to Dismiss Ms. Chen's Amended Complaint. Mr. Smith's Motion to Dismiss was filed with the court on January 8, 2009. (Document #65). Ms. Chen filed an Opposition to Mr. Smith's Motion to Dismiss and Supporting Memorandum of Law on February 26, 2009. (Document #133). In addition, on this same date, Ms. Chen filed a Motion to Amend her Complaint as to Mr. Smith. (Document #134).

After considering the allegations of the Amended Complaint as well as the arguments set forth in the various Motions to Dismiss the Amended Complaint, Chief Judge Anne C. Conway issued an order that was entered on March 19, 2009 that had the effect of granting the various Motions to Dismiss. (Document #151). Ms. Chen filed her Notice of Appeal of the District Court's order on the same date, March 19, 2009. (Document #152).

The underlying facts in this litigation are somewhat difficult to decipher given the nature of the content of the various documents that Ms. Chen filed below, a flaw which the District Court noted in its March 19, 2009 order, and a flaw which continues to manifest itself with the filing of Ms. Chen's Petition for Writ of Certiorari. Breaking down the contents of Ms. Chen's Amended Complaint, it appears that this litigation is an effort on the part of Ms. Chen to have the federal court review the determination of state court judges within the state of Florida who issued rulings and entered orders that were contrary to her interests in a dependency hearing. From the

allegations of the Amended Complaint, it appears that Ms. Chen is seeking redress for the decision of a Florida State Circuit Court judge to deprive Ms. Chen of custody of her children, to limit her contact with her children to supervised visitation, and to otherwise restrict her parental rights.

Mr. Smith, as is properly alleged in Ms. Chen's Amended Complaint, is the principal of the Faith Christian Academy, a private school located within the Middle District of Florida, where Ms. Chen's children attended school. (Document #4, page 8). The specific allegations against Mr. Smith within the Amended Complaint are vague, but what appears to be the crux of Ms. Chen's allegations is that Mr. Smith was involved in the transfer of custody of Ms. Chen's minor children pursuant to the Florida State Court's order. (Document #4, page 8). Ms. Chen then goes on to make the conclusory statement that Mr. Smith violated federal statutes and the Constitution. (Document #4, page 13). There is no specific allegation contained within the Amended Complaint to support the contention that Mr. Smith was a state actor capable of committing a violation of Ms. Chen's civil or constitutional rights.

Ms. Chen's Amended Complaint contained 11 counts, none of which stated a claim for which relief can be granted, and therefore the District Court properly entered an order dismissing Ms. Chen's claim with prejudice, which the Eleventh Circuit appropriately affirmed. Count I of the Amended Complaint is an allegation of a violation of 42 U.S.C.

§§ 1983-1986. (Document #4, page 25). Counts II and III are really not causes of action at all, but are rather citations to the legal authority identifying the oath that legislators and constitutional officers must take, as well as guidelines for administering the oath. (Document #4, pages 25-26). Counts IV-VIII are all accusations of criminal conduct, none of which give rise to a civil cause of action. (Document #4, pages 26-28). Count IX of the Amended Complaint is for breach of a contractual agreement, although notably Mr. Smith is not a party to that agreement. (Document #4, pages 28-29). Count X is for an alleged violation of Chapter 39, Florida Statutes, which addresses the protection of children. (Document #4, pages 29-30). Finally, Count XI of the Amended Complaint is for an alleged violation of Ms. Chen's Fifth Amendment rights. (Document #4, pages 30-31).

There are no specific allegations contained within the Amended Complaint that would explain why anyone other than Ms. Chen has been identified as a Plaintiff in the underlying lawsuit. In spite of this fact, Charlie H. Davis, Leyda E. Chew, Michael Taylor and Mary C. Fox were all listed as Plaintiffs in the Amended Complaint, and are all listed as Petitioners here. There are no allegations contained within the Amended Complaint to support a cause of action on behalf of any of these four individuals. Indeed, the District Court noted in its March 19, 2009 order that there was no apparent reason for the inclusion of these individuals as Plaintiffs in this lawsuit. (Document #4, page 5). Ms. Chen inexplicably included

documents from court papers involving these four individuals as part of the record on appeal both within the record presented to the District Court, as well as documentation presented to the Eleventh Circuit.

The District Court's March 19, 2009 order is an extremely detailed 36-page document that goes into the specifics of Ms. Chen's Amended Complaint, and addresses the arguments raised in each of the various Motions to Dismiss filed on behalf of the Co-Respondents. (Document #151). As to the allegations against Mr. Smith, the District Court found: "Plaintiffs seem to allege that Smith violated state court orders by removing Chen's children from school without her consent and transporting them to Seminole County authorities." (Document #151, page 22-23). The District Court's ruling as to Mr. Smith's Motion to Dismiss was as follows:

> Smith moves to dismiss the Amended Complaint pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. (Doc. No. 65 pp. 6-8). Specifically, Smith argues that Plaintiffs have failed to state any facts to support their claim that Smith acted "for the government in such a way as to qualify as a state actor capable of violating Plaintiffs' Fifth Amendment rights." (***Id***. at p. 8).
>
> The Court finds that Plaintiffs have failed to allege sufficient state action to support a § 1983 [claim] against Smith. Specifically,

> Plaintiffs do not allege any facts suggesting that Smith was encouraged by a state actor to remove Chen's children from school, that Smith acted jointly with a state actor, or that Smith's conduct was "significantly affected with state involvement." *See* ***Willis [v. University Health Services, Inc.***, 993 F.2d 837 (11th Cir. 1993)]. Accordingly, Smith's motion to dismiss will be granted on this basis.

(Document #151 at page 23).

At the conclusion of the District Court's order, the District Court indicated that Mr. Smith's Motion to Dismiss Plaintiffs' Amended Complaint with Prejudice (Document #65), filed on January 8, 2009 is granted. (Document #151 at page 35). In addition, the District Court's order indicated that the entire litigation would be dismissed with prejudice, with the following finding: "In light of Plaintiffs' persistent history of filing baseless and largely incomprehensible pleadings which have impacted the resources of this Court, as well as of Defendants, the Clerk is directed not to accept for filing any future pleadings submitted by Plaintiffs in this case, except for a notice of appeal." (Document #151 at page 36).

The Eleventh Circuit considered all of the arguments that Ms. Chen raised on appeal, and rejected every one of them. The Circuit Court agreed with the District Court's analysis that Mr. Smith was never alleged to be a state actor, and as a result he could not be liable for an alleged violation of

42 U.S.C. § 1983. The Circuit Court also agreed with the analysis of the District Court that supported the dismissal of Ms. Chen's Amended Complaint as to each of the other Co-Respondents. The Circuit Court's February 1, 2010 opinion also sets forth the rationale for affirming the District Court's decision to abstain from addressing ongoing state court proceedings pursuant to this Court's decision in ***Younger v. Harris***, 401 U.S. 37, 91 S.Ct. 746 (1971). The Eleventh Circuit also analyzed and rejected Ms. Chen's remaining substantive claims. Finally, the Eleventh Circuit found that the District Court judge properly refused to recuse herself, and appropriately refused to allow Ms. Chen to amend her Complaint once again, because to do so would be futile. The Eleventh Circuit's 20 page opinion properly affirmed the District Court's 36 page order in all respects, and there is nothing contained within either the District Court's order or the Eleventh Circuit's opinion that would trigger this Court's jurisdiction.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED MS. CHEN'S LAWSUIT WITH PREJUDICE, AS SHE FAILED TO STATE A CLAIM FOR WHICH RELIEF COULD BE GRANTED, HER REQUESTED RELIEF WAS BARRED BY THE ABSTENTION DOCTRINE, AMENDMENT WOULD HAVE BEEN FUTILE, AND SHE HAS NO LEGITIMATE BASIS TO PURSUE ADDITIONAL REVIEW FROM THIS TRIBUNAL.

The instant Petition is an effort by Ms. Chen to have this Court review the affirmance issued by the Eleventh Circuit of the order of the District Court which had the effect of dismissing Ms. Chen's Amended Complaint with prejudice. There is no basis contained within the Petition that would support the issuance of a writ as Ms. Chen requests. The record reveals that Ms. Chen filed what can at best be described as an unwieldy original Complaint, with confusing allegations spread across a broad spectrum of Defendants, without any cohesion or clarity to the written allegations. Ms. Chen's Amended Complaint was similar to the original Complaint in its lack of organization.

Mr. Smith moved to dismiss the First Amended Complaint for the failure to state a cause of action for which relief could be granted. Indeed, there is no way to assert a federal claim for violation of 42 U.S.C. § 1983 against Mr. Smith, a private individual, who has no connection to Ms. Chen whatsoever other than

being the Principal of the Faith Christian Academy, the private school that Ms. Chen's children attend.

Ms. Chen's Amended Complaint is just as incomprehensible as the documents she has filed with this Court and with the Eleventh Circuit Court of Appeals. In her various filings, Ms. Chen raised the same incoherent charges against the various Defendants. The District Court properly recognized that the Amended Complaint was deficient, and warranted dismissal. Given the nature of the other filings with which Ms. Chen had clogged the District Court, the District Court properly ordered that the dismissal would be with prejudice. With ample opportunity to review the District Court's decision, the Eleventh Circuit Court of Appeals affirmed the District Court in all respects.

There is nothing contained within Ms. Chen's Petition for Writ of Certiorari that compels any conclusion other than the Petition should be denied. In fact, the Petition filed with this Court closely resembles the Complaints that were ultimately rejected at the District Court level, and the appellate brief that was rejected at the Circuit Court level. The allegations against the various Co-Respondents are haphazard, incoherent, and likewise fail to state a cause of action for which relief can be granted. There was no allegation in either of the complaints filed with the District Court that raised a colorable argument to support a cause of action against Mr. Smith. There was likewise nothing within the

Petition to support the issuance of a writ in this case. In the absence of any coherent argument to support a reversal of the Circuit Court's affirmance of the District Court's dismissal of the Amended Complaint with prejudice, the District Court's order must be allowed to stand, and this Court should deny Ms. Chen's Petition for Writ of *Certiorari*.

CONCLUSION

For the reasons stated herein, the Respondent respectfully requests that this Court deny Ms. Chen's Petition for Writ of *Certiorari*, and affirm the District Court and the Circuit Court in all respects.

Respectfully submitted,

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No. 09-1542

In The Supreme Court of The United States

ZINNIA I. CHEN, CHARLIE H. DAVIS,
LEYDA E. CHEW, MICHAEL TAYLOR,
AND MARY C. FOX,
Petitioners,

v.

HON. KENNETH R. LESTER, JR., *ET AL.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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PARTIES TO THE PROCEEDINGS

(Rule 14.1(b))

Petitioners Zinnia I. Chen, Charlie H. Davis, Leyda E. Chew, Michael Taylor and Mary C. Fox have no parent corporation and no publicly held company that owns 10% or more of its stock Rule 29.6. Accordingly, the parties to the proceedings are:

Lower State Court Magistrate Judges/Respondents

Hon. Galluzzo D. John

Hon. Lester Jr. Kenneth R.

Hon. Sprinkle IV, George A.

Lower District Court Trial Judges

Hon. Baker David A.

Hon. Kelly Gregory J.

Hon. Spaulding Karla R.

Lower District Court Chief Judge

Hon. Conway Anne C. / Complained Of Judge

PARTIES TO THE PROCEEDINGS – Continued

Attorneys

Grant Jeffrey K.

Gorenflo Clifton H. / Respondent

Gorenflo Rachel A. / Respondent

Harrop L. Ronald

Lerner Robert N. / Respondent

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Sewell E. Susan

Siebens Gerald D.

Parties And Affiliates

Amin Mrinalini / Respondent

Bolar Elaina / Respondent

Chen Zinnia I./Petitioner / InsideOut Charitable's Inc.

Chew Leyda E. / Petitioner

Clem Thomas / Respondent

Davis Charlie H. / Petitioner

Deleon Victor Gregory / Respondent

Dew Claire Oscar F. / Respondent

Eslinger Donald F. / Respondent

PARTIES TO THE PROCEEDINGS – Continued

Fox Mary C. / Petitioner

Gardner Lydia / Respondent

Gosh Bill / Respondent

Hess Barbara / Respondent

Morse Maryanne / Respondent

Nelson Mike / Respondent

Ochs Holly / Respondent

Phipps Laura / Respondent

Spaziano Lee M. / Respondent

Smith Chuck / Respondent

Taylor Michael / Petitioner

Tricomi Katie / Respondent

The U.S. Department Of Justice / Civil Division

Eric H. Holder Jr.

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(Rule 14.1(c))

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REPLY BRIEF FOR PETITIONERS

COMES NOW, the petitioners pro'se Zinnia I. Chen, Charlie H. Davis, Leyda E. Chew, Michael Taylor, and Mary C. Fox pursuant to Supreme Court Rule 15:6 provision disclosing that any petitioner may file a reply brief addressed to the new points raised in the brief in opposition namely, the one and only reply brief in opposition filed July 21 2010 in the instant case by the undersigned counsel of record for principal / respondent Chuck Smith, *hereinafter* Smith.

That, pursuant to Supreme Court Rule 12.3 a "waiver" was indeed filed by respondents Donald F. Eslinger, Mrinalini Amin, Thomas Clem, Barbara Hess, Holly Ochs, Mike Nelson. Bill Gosh, Kati Tricomi, Laura Phipps, Lydia Gardner, Clair Oscar Dew, Maryanne Morse, Hon. Kenneth R. Lester Jr. and Hon. John D. Galluzzo. However, a "waiver" was not filed by the remaining seven-respondents specifically respondents Victor Gregory Deleon, Clifton H. Gorenflo, Rachel A. Gorenflo, Robert N. Lerner, Lee M. Spaziano, Hon. George A. Sprinkle IV, and Elaina Bolar.

Petitioners hereby reply to Smith's brief in opposition disclosing that pursuant to Rule 3 Federal Rule of Civil Procedure on November 18, 2008 petitioners properly commenced this civil action by the filing of the subject complaint initially filed in District Court below (Doc. 1). However, contrary to the false suppositions of an "amended complaint" filed by petitioners as wholly alleged by Smith sparingly through out his brief in opposition filed at this late date. Petitioners received not even a minimal Rule 15(a) Federal Rule of Civil Procedure amendment subsequent to the filing of their initial complaint in the district court below on November 18, 2008 (Doc. 1).

At the time of December 8, 2008 respondents not limited to Smith still had not answered the subject complaint initially filed by petitioners nor had they served a responsive pleading (*see* Doc. 4, Page 3, ¶7). Much less, the judicial processing division of the lower Orange and Seminole County Sherriff Department had not effected service of summons with complaint on respondents in the manner as required by Federal Rule of Civil Procedure 4(1)(m).

Under duress at the time of December 8, 2008, petitioners supplemented their forgoing complaint initially filed on November 18, 2008 by the incorporation of a chronology of other ongoing constitutional and due process violations which occurred concurrently in the state court below. Among other things, are the contusioned wrist suffered by petitioner Taylor during his utterances to the court of said complaint as well as the false arrest and pay-roll garnishment which Taylor and Fox endured at the time of their court-ordered appearance in front of respondent / Hon. George A. Sprinkle IV whom presided over the complained of underlying manufactured real estate fraud state court proceedings incorporating petitioners Taylor and Fox as well as defendants / respondents Robert N. Lerner and Lee M. Spaziano (more specifically, companion case# 2006CA-008209-0 interposed herewith and initially filed In The Circuit Court Of The Ninth Judicial Circuit, In And For Orange County, Florida)……

As it is apparent, in reply Smith then commence a campaign to ridicule and undermine petitioners prayer for relief or at minimal the granting of a "petition for writ of certiorari" by this Honorable Court.

In doing so, noticeably Smith completely omitted the evidentiary video-taped DVD"s (Doc. 89, 119 & 126) incorporating the documented conspiracy not limited to the repeated deprivation of petitioners rights committed concomitantly by said respondents of the Seminole County Justice Department of the state of Florida whom at the time of September 3, 2008 compelled Chen to appear in multiple bogus manufactured state court proceedings prepared below.

Although this was not disclosed by Smith in reply, in the alternative Smith offers nothing more than a culmination of preposterous lies, dubious assertions with wicked intent, disingenuous half-truths and worse than that that which he disingenuously incorporated in his "statement of the case" and proposition as "the facts" on Pages 1-7 in order to deceive this Honorable Court to believe that petitioners / "plaintiffs seem to allege that Smith violated state court orders by removing Chen's children from school without her consent and transporting them to Seminole County authorities." Contrary to Smith's assertions, the forgoing companion case and civil matter incorporating Chen's minor children had already been disposed of by the Honorable Nancy F. Alley of the "Circuit Court,.....

Eighteenth Judicial Circuit, In And For Seminole County Florida (case #, 02-DR-4662-02DL), on August 25, 2008 respondent Smith and Deleon repeatedly violated the existing order of the court (Doc. 4, Page 8, ¶¶ 33-34) which furthermore was received repeatedly by Smith in via-certified correspondences which Smith at all times acknowledged receiving and purportedly retained in the records at "Faith Christian Academy" school (Doc. 4, Page 9-12). At the time the subject order was repeatedly violated by respondents / Smith and Deleon there was no existing order requiring Smith to permit Deleon to violate the order and transport Chen's minor children out of the jurisdiction of Orange County into the jurisdiction of Seminole County authorities. Equally gross, taken out of the context by Smith are the facts of exactly what really transpired during petitioners course of action in the courts below compounded by "Smith's personal *de novo* purview of complained of lower district court Chief Judge Anne C. Conway's erroneous order entered March 19, 2009 (Doc. 151). In short order, this appears on "page 2", "¶3" of Smith's "statement of the case and of the facts" offered to this court.

Indisputably, how right petitioners named herein were to report complained of Judge Anne C. Conway relative to the provisions of Title 18 U.S.C. 241 and 242 and 18 U.S.C. 4.

Unequivocally, Smith deceptively ramble on to precluded the lower district court's premeditated beginning in the end compounded by Smiths' specific quotations from Judge Anne C. Conway's erroneous order precluding that "the facts in this litigation are somewhat difficult to decipher given the nature of the content of the various documents that Ms. Chen filed below" when in fact the subject interposed complaint filed herein at all times incorporated petitioners Chen, Davis, Chew, Taylor and Fox howled protest documented more than 10-times relative to "the repeated due process and constitutional violations" committed by respondents of the state of Florida in said state courts below (Doc. 4, ¶¶ 4, 10, 11, 12, 13, 14, 16, 17, 18, 20, 22, & 23) enough in this avenue...

Federal Law

In the district court below, as mandated by Federal Rule of Civil Procedure 8(1)(2)&(3). When pleading, plaintiffs / petitioners accordingly filed a complaint with "short and plain statements of the grounds upon which the Court's Jurisdiction depended". And equally regarded further mandates there under stating that "unless the court already has jurisdiction and the claims needs no new grounds of jurisdiction to support it", or offer "a short and plain statement of the claim showing that the pleader is entitled to relief" and a demand for judgment for the relief the pleader seeks. Furthermore, "relief in the alternative or of several different types may be demanded". Accordingly, the composition of the interposed complaint filed by the plaintiffs named herein regarded the same prior to it's filing in the district court below. Here petitioners, note that there was no explicable reason for the dismissal of plaintiffs complaint (Doc. 4) other than the continued constitutional violations equally suffered by plaintiffs below..

In the alternative, all by itself, Rule 72 Federal Rule of Civil Procedure provisions provided the appropriate mandated standard for review by a district court as opposed to the statements conclusively uttered by Smith and complained of Judge Anne C. Conway stating " in light of plaintiffs persistent history of filing baseless and largely incomprehensible pleadings which have impacted the resources of this court, as well as of defendants, the clerk is directed not to except for filing any future pleading submitted by plaintiffs in this case, except for a notice of appeal". Moreover, in addition to circumvention of Rule 72 Federal Rule of Civil Procedure, petitioners appearing herein were essentially denied the opportunity to frame even a minimal response to the subject ambiguous order entered *sau sponte* by complained of lower district court Chief Judge Anne C. Conway's on March 19, 2009 (Doc. 151). As it appears, in *U.S. v. Goodwin*, 102 S. Ct, 2485, 457 U.S. 368, 73 L.E.d2d 74, on remand 687 F.2d 44 (1982). An individual may not be punished for exercising a protected statutory constitutional right including Title 28 of the Civil Rights Act of 1964, 42 U.S.C. 1983 and 28 U.S.C. § 1343(a)(1)(2)(3) and 1331 and their counter parts there under.

At best, in addition to the lower district court permitting petitioners to do no amendment to the subject complaint filed by petitioners in the district court below, conclusively petitioners were ordered not to file an objection to the district court's order filed below specifically "Doc. 151".

PETITIONERS REPLY TO SMITH'S ARGUMENT INCORPORATED IN SMITH'S BRIEF IN OPPOSITION FILED JULY 21, 2010 IN THIS SUPREME COURT OF THE UNITED STATES

Smith is utterly mistaken as to the sum-total of petitioners reasoning for a "Petition For Writ Of Certiorari". This is not at all wholly "an effort by Ms. Chen to have this court review the affirmance issued by the Eleventh Circuit of the order of the District Court which had the effect of dismissing Ms. Chen's" purported "amended complaint with prejudice"... In the alternative, as it was with petitioners incorporation of "InsideOut Charitable's" and petitioners November 2, 2009 out-cry urging the civil division of "U.S. Department Of Justice" to look into this matter similarly this equally an effort to report the continued

constitutional and due process violations concomitantly committed in the underlying court's below. Substantively, said violations are routinely repeatedly committed in retaliation simply because a complaint was raised by a pro se petitioner against a respondent of the state of Florida. Smith please note, had the pro se petitioners named herein believed that if it was at all fruitful to elect the services of Smith and his undersigned counsel to substantiate that "there is no basis contained within the Petition that would support the issuance of a Writ as Ms. Chen requested" we would have indeed done so and not elected the proper venue and forum of the lower district court as well as the Federal Rules Of Civil Procedure to do so... Understandably, a "writ of certiorari" currently means an order by a higher court directing a lower court, tribunal, or public authority to send the record including the sealed evidence in the instant case for review. That said, subsequent to petitioners filing the subject complaint in the district court below, there was nothing normal in contrast to the abnormal unruly course which petitioners complaint traveled since inception of the filing of the subject complaint.

In tantamount and error proffered, Rule 12 Federal Rule of Civil Procedure provisions provides that a "defense or objection" by respondents be timely filed within 20-days after being served with summons and complaint. In the instant case, the respondents touted to be covered-up by Smith and the lower district court was actually employed within the same building as the judicial process division moreover as it appears service of summons was than delayed and aborted weeks and weeks as the district court below repeatedly circumvented its own forgoing orders of the court (specifically Doc. 3) as magistrates / respondents whom presided over the subject interposed manufactured state court cases below continued to affect false judgments and manufacture garnishments therein against plaintiffs.

Accordingly, at the time of December 23, 2008 pro'se petitioners herein subsequently repeatedly filed their "Petition For Writ Of Mandamus" to the lower "U.S. District Court, Middle District Of Florida, Orlando Division" disclosing the same (Doc. 16 & 33). Although, Smith argumentatively in his "statement of the case and of the facts" state that "given the nature of the other filings with which Ms. Chen had clogged

the District Court, the District Court properly ordered that the dismissal would be with prejudice" when in fact petitioners herein were compelled to file pleadings motions and correspondences as a paper-trail to account for the unorthodox course their complaint took subsequent filing the complaint in the District Court below.

More bizarre, it was not until petitioners mandamus filing of "Doc.16" that petitioners received the "returns" for service of summons for "Doc.'s 17 – 32" as well as petitioners mandamus filing of "Doc. 33" which yielded the "return" for service of summons for "Doc's. 55, 58 & 59". Unequivocally, at the time petitioners supplemented their complaint on December 8, 2008 incorporating the contusioned wrist which Taylor suffered respondent / Hon. George A. Sprinkle IV appearing before petitioner's Taylor and Fox during the manufactured hearing still had not been served the summons and complaint and was permitted to elude into retirement by the "Orange County Judicial Process Division" employed within the same building (*see*, Doc.'s 35 & 36).

In reckless disregard to Rule 12 Federal Rule of Civil Procedure and the complaint timely filed by petitioners, respondents of the state of Florida concurrently effected false judgments against petitioners in the state courts below. During this continued construction of divisive mechanisms to deprive petitioners of their children, effect false arrest, real-estate fraud claims and the continued deprivation of constitutional rights all while petitioners cried-out under the umbrella and jurisdiction of the district court below and received no answer, by far the respondents of the state of Florida herein were liberally granted phony "enlargements of time" beyond the mandated 20-day period permitted to file their purported reply briefs (Doc's. 39, 47, 51, & 52) which Smith conclusively has now taken extremely out of context.

For the purpose of rule 15(A), Federal Rules of Civil Procedure a motion to dismiss is not a responsive pleading or answer. *See* also, *Walgreen v. Howes*, 482 F. 2d 95, 96-97 n. 1 (1 st Cir. 1973); 6 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1483 (1990) at 585. Equally, a private party involved in such a conspiracy, even though not an official of the state, can be liable under § 1983. Private persons, jointly engaged with state officials in the prohibited action (as is Doc. 4, Pages 9-12) , are acting "under color" of law for the purpose of the statute. Substantively, to act "under color" of law does not require that the accused be an officer of the state. It is enough that he is a willful participate in joint activity with the state or its agents. See also, *United States v. Price*, 383 U.S. 787, 794 [86 S Ct. 1152, 1156, 16 L.Ed. 2d 267] (1966), 398 U.S., at 152, 90 S.Ct., at 1605.

REASON FOR GRANTING THE WRIT

In the instant case, the foregoing orders received from the lower U.S. District Court, Middle District of Florida as well as the underlying Eleventh Circuit, Court of Appeals was not only erroneous they were hideously erroneous and in tantamount are a cover-up in proportion to a preconceived miscarriage of justice. Equally, aside from the underlying forgoing due process and constitutional violation claims filled by plaintiffs Charlie H. Davis, Leyda E. Chew, Michael Taylor, Mary C. Fox and incorporated in the underlying interposed complaint "Doc. 4". On the evening of September 3, 2008 said respondents of the Seminole County Sheriff Department of the state of Florida named herein appeared at the resident belonging to petitioner Chen were no crime had been committed. This appearance was collectively made by said respondents of the state of Florida on their own initiative.

At the time the violation occurred, the visited appeared to be official if you happened to be an on looker standing afar looking on. However, that very hour Chen's minor children were repeatedly unlawfully removed from Chen's custody in circumvention of an existing order of the court as a personal favor for Chen's former husband respondent / Victor Gregory Deleon. During the course of this action petitioners believe that justice would ultimately prevail, but in the alternative petitioners herein received an even worst deprivation of their constitutional rights and rights to due process subsequent to appearing with evidence in hand necessary to bring about a conviction in the court's below.

CONCLUSION

The Eleventh Circuit Court Of Appeals and District Court judgment below should be reversed, with the directive to affirm in favor of pro'se petitioners in lieu of the constitutional provisions mandated above.

Respectfully Submitted,
Zinnia I Chen,
Charlie H. Davis,
Leyda E. Chew,
Michael Taylor, &
Mary C. Fox